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Mr. Seaton states he is acting to prevent fraud. Well, if there really is fraud involved getting PFD's by college students, why not prosecute the defrauding students. If Mr. Seaton has any information at all concerning this type fraud, he should turn it over to the Department of Law, and he should also make it public. Present Alaska law provides strict penalties for PFD fraud, these include: the loss of all future dividends, requiring the paying back all dividends paid to date, and a fine of up to $5,000.

The mentality of prosecuting an entire group of people for the transgressions, real or imagined, of a few is absurd. If any legislator has ever abused per diem, out-of-sessions 'official' expenses, should we eliminate this compensation for all Legislators?

Mr. Seaton's ill-conceived bill pits Alaskans against each other for no purpose. By Mr. Seaton's own word, he has introduced this bill because he has "heard" that a lot of college students are committing fraud by getting a PFD check. One would think that the Legislature should act upon "fact" not rumor.

Mr. Seaton also claims to be trying to stem the 'brain drain' by encouraging college students to return to the State of Alaska after college. In an very short sighted way, he is correct about this - - if legitimate students who are Alaska residents have their PFD cut off, they may be returning to Alaska sooner than they planned. Many of these students can't afford college without the PFD.

Has my daughter, any less claim to Alaska wealth then Mr. Seaton? She was born and raised in Alaska while he is, or was, a Californian, I believe. My daughter is attending Southern Oregon University. She returns home each Christmas break and works. She is also here, in Homer, working each summer. She will graduate next year and then enroll in the University of Alaska hoping to earn a Masters degree in special education teaching. Why should her PFD be 'lock boxed' until Mr. Seaton decides how and when she spends it? So far, she has spent it on her education.

By the same twisted logic, why should she be able to pay resident tuition at the University of Alaska - - why not charge her non-resident tuition and if she stays here for a year or so, then we can refund her over-payment. Same logic, same flaw.

Here's an idea. Why not make Legislators pay their own expenses, both living and official, and then let the public vote each year as to whether they are reimbursed or not?

When Mr. Seaton and my daughter both signed their PFD Application, they both certified that: 1. I am now and intend to remain an Alaska resident indefinitely. 2. I was an Alaska resident for all of 2003. And, 3. I haven't claimed residency in another state. I deeply resent Mr. Seaton's implication that he tells the truth and my daughter is may be lying. I am very disappointed in Legislators who preach less government interference in our lives and then try to control every aspect of it.

The 6,000+ Alaska students who attend school outside should not be punished for the whim of a Legislator. These students are trying to better themselves and deserve Alaska's support, not interference.

In summary, a person is either a resident or they're not - - if they are, and they fulfill all the PFD residency requirements, they are entitled to the full benefit of residency. This is only basic fairness.

Perhaps the State could save more by curtailing all financial assistance to, say, oh, the fishing industry, Mr. Seaton.

Ron Drathman
P.O. Box 12
Homer, Alaska 99603

907-235-7207

Subject: Bill introduced in state affairs - PFD
Date: Thu, 01 Apr 2004 23:14:31 -0900
From: Dan and Madelyn Walker <sixmilebb@alaska.com>
To: rep.paul.seaton@legis.state.ak.us

Dan and Madelyn Walker
6 Mile B&B
PO Box 112 33175 Stoney Creek Avenue
Seward, Alaska 99664
B&B Website http://www.Alaskaone.com/6mile

----- Original Message -----
From: "Dan and Madelyn Walker" <sixmilebb@alaska.com>
To: <rep.paulseaton@legis.state.ak>
Sent: Thursday, April 01, 2004 5:32 PM
Subject: Bill introduced in state affairs - PFD

> *Representative Seaton:*
> *I can't believe you can afford to spend time micromanaging admission of* the
> *PFD - if you truly want to encourage people to return to Alaska, spend the time on developing the kind of economy that creates good jobs for them to return to. I can't believe you would penalize military and college* students
> *and hold their PF's hostage. They are entitled as Alaska residents - when they are no longer in school or military and still live outside, they are* no
> *longer elible. [illegible] takers of the fund can take care of fraud loopholes administratively - don't waste legislative time on it.*
> *I have a son in college "outside" who will graduate with almost NO debt - the PF was important to help sustain him in college. Without it he would have substantial debt - why should he pay interest on that because you withheld his PF to "encourage him to return". It's bologna.*
> *The legislature needs to quit looking to the "little people" to penalize, carry the load or shoulder the burden: the little tennis shoed grandma tourist, the poor smoker, our kids in the military, our college kids,* people
> *who enjoy a beer.....have the guts to make a real change , take the issues straight on and show some leadership.Be statesmen, not* micromanagers.
> *Madelyn Walker*
> *PO Box 112 Seward, Alaska 99664*
>

Subject: HB 547
Date: Wed, 31 Mar 2004 19:57:55 -0600
From: "Joshua Wyatt" <wyatt@stolaf.edu>
To: <Representative_Paul_Seaton@legis.state.ak.us>

Dear Representative Seaton:

I recently read your new bill, HB 547, which proposes that dividend checks be withheld from persons with allowable absences, including full-time college students and those receiving or providing needed medical assistance. I would like to say that I am dismayed at this possibility. As an Alaska resident since birth, I have received the Permanent Fund check each year, and have thankfully been able to receive the dividend for the past three years of my enrollment in an Outside private college, as well.

As you know, the cost of obtaining a quality education is rising fast; my bill for next year exceeds $30,000. The cost of college places a heavy strain on my family's financial situation; and our budget will be stretched even farther when my sister also begins college this fall. While the annual PFD may seem small in comparison to the total, each dollar received means one less dollar that I must assume in long-term debt through student loans.

In order to apply for each year's dividend, I must not only submit the application, but also provide certified documentation from my school showing my enrollment status, as well as account for all dates I spent outside the state during the year. There is also a requirement for returning to the state for 72 consecutive hours.

While I would support efforts to reduce dividend fraud, perhaps we could more closely scrutinize "allowable absence" applications, rather than withhold the money from those small number of persons, many of whom really do rely on the added income.

-Joshua Wyatt '05
resident: Eagle River, Alaska
wyatt@stolaf.edu

Subject: HB547
Date: Mon, 5 Apr 2004 21:44:45 -0500
From: "Deanna Roberts" <meltingdino@hotmail.com>
To: <Representative_Paul_Seaton@legis.state.ak.us>

Dear Representative Seaton,

My name is Senior Airman (SrA) Deanna Roberts. I was born and raised in Fairbanks Alaska until I was 21 yrs old, at which time I joined the Air Force to serve my country. It has come to my attention that my Alaska Permanent Fund Dividend is being threatened by the legislature. I am very disappointed that Alaska would turn its back on its residents just because they are serving in the military.

House Bill 547 is not fair to those who serve in the military; it is also not fair to those students who just want to expand their education farther then the University of Alaska can do, although they would be able to get their dividend back after they finish school.

I understand the frustration of non-residents coming to Alaska for four years military service, then leaving with no thought of really returning, yet still collecting the dividend until they retire. But isn't there a better way of protecting the dividend, such as allowing the military to get their dividend out of state only if they lived in Alaska for more than seven years before they joined? Most military tours consist of four years - sometimes their tour is extended a little but the ones who don't really love Alaska will leave after four years.

Most enlisted men and women do not have a choice on where they are posted - they are allowed to request Alaska as a duty station, but their "dream sheet" seems to be rarely ever considered. They sometimes don't even have a choice of how long they remain in the military, as when certain career fields were put on stop loss recently.

I understand that HB547 would hold the dividend for up to 10 years but even that isn't good enough - a military person isn't considered for retirement until they have been in for 20 years. We do not get a year furlough every 10 years! There is no way we can return home to live for a year, then resume our service. So if I were to retire after 20 years and come back to Alaska I would lose all those dividends in-between. That is not much thanks to military personnel for being sent to Iraq and with the constant possibility of dying for their state and country.

I am currently serving in San Antonio, Texas at Brooks City-Base in a special duty assignment and if I had known that Alaska would hold my dividend while I was serving in the military I probably wouldn't have joined. Bill 547 discourages other young residents from serving their country. Please don't punish Alaska residents for joining the military!

SrA Deanna Roberts
USAF

Subject: HB 547 -- PFD: Delay Payment for Allowable Absences
Date: Mon, 05 Apr 2004 20:06:42 -0800
From: Tom Gemmell <gemmell@gci.net>
To: Representative Bruce Weyhrauch <Representative_Bruce_Weyhrauch@legis.state.ak.us>,
"Representative John B. Coghill Jr" <representative_john_coghill@legis.state.ak.us>,
Representative Bob Lynn <Representative_Bob_Lynn@legis.state.ak.us>,
Representative Paul Seaton <Representative_Paul_Seaton@legis.state.ak.us>,
Representative Ethan Berkowitz <Representative_Ethan_Berkowitz@legis.state.ak.us>,
Representative Max Gruenberg <Representative_Max_Gruenberg@legis.state.ak.us>,
Representative Beth Kerttula <Representative_Beth_Kerttula@legis.state.ak.us>,
Senator Kim Elton <Senator_Kim_Elton@legis.state.ak.us>,
Representative Jim Holm <Representative_Jim_Holm@legis.state.ak.us>

Dear Representatives,

I am opposed to HB 547 and recommend that your committee kill the bill. This bill is an insult to military personnel and to all families trying to obtain college or vocational education for their children.

The statutes on the books are adequate to weed out those who do not intend to remain residents of Alaska. If there is a class of people (e.g. retired state workers, teachers, nurses, fishermen, military) that is attempting to beat the system, let's see the evidence and then let the existing system work.

If you really feel this is a viable tool to weed out people who don't really intend to remain residents, apply it on a random basis to 25% of all Alaskans. Hold people's dividends without interest for ten years, then return the dividend to the survivors after it has lost value due to inflation. If this is a truly "fair" proposal then you should receive positive feed back about how great an idea this is.

Military personnel and their families are subjected to many indignities. The Congress and many Administrations have failed to provide promised pay parity over the years and short-change widows; working conditions have often been poor, and living conditions less that adequate. The military family and retiree medical care system (Tricare) is so poorly funded that many Alaska medical providers refuse to accept it. Add in stressful deployments and frequent moves and you can see some other negative impacts.

My Alaska residency began August 15, 1950 and I served 30 years active duty in the U.S. Coast Guard. I served for sixteen years in Alaska -- during that time I did not come across any crew members who tried to beat the system by falsely claiming residency.

Passage of HB 547 would be an insult to our service members and I hope that you have better things to do with your time.

Sincerely,

Thomas M. Gemmell
Captain, U.S. Coast Guard (Ret)
3201 Nowell Ave
Juneau, AK 99801-1933

Subject: Regarding HB 547
Date. Wed, 31 Mar 2004 09:53:45 -0900
From: Gigi Pilcher <warriorwoman@kpunet.net>
To: Representative_Paul_Seaton@legis.state.ak.us,
Representative_Bruce_Weyhrauch@legis.state.ak.us

Dear Rep. Seaton and Rep Weyhrauch,
I read this morning about the proposed plan you are sponsoring to keep the permanent fund checks from active duty military personnel.
My son was born and raised in Alaska.
He attended the Alaska Military Academy (formerly the Alaska National Guard Youth Challenge Corps) and graduated from it at the age of 16 with his GED.
He used his stipend from the program to enroll in college classes so he could earn enough college credits to enlist in the U. S. Marine Corps.
On his 17th birthday we signed the papers and he left for basic training on June 3, 1996.
My son will be turning 25 next month, (April 30th). He is a Sgt. in the U.S. Marine Corps.
He comes home twice a year except for when he is on a MEU (float), then he comes home at least once.
Last March, right about now he was entering Iraq where he stayed until September 15, 2003.
While serving there, he received a commendation for his bravery.
http://www.sitnews.us/1103news/111203/111203_zack_pilcher.html
My son was twice hospitalized while in Iraq.
He was willing to die for our country and almost did twice while in Iraq.
Is my son's service to this country any less than that of Senator Stevens ?
I do know he is paid far less than a senator is.
Before he left last March he came home to Alaska for two weeks in February.
When he got back from Iraq he came home for Christmas for three weeks. **He is now getting ready to return to Iraq.**
I can't believe that their are people who would deny him his permanent fund check. He has maintained his residency.....he comes home when ever he can.
He loves Alaska and hopes to return here after he completes his career in the Marine Corps.
This proposal is a slap in the face for any Alaskan who serves in the military. Alaskans have always proudly served their country.
Now...they are going to penalized for this ? At a time when our country needs people to serve in the armed forces.....you come up with this idea.
As far as I know we (the United States) is still at war..... It is getting harder and harder for our military to keep up a volunteer force. What a way to show my son and other Alaskans our "appreciation" for their service.
I also think it is ironic that the permanent fund application are going to be used to sign up for the selective service.....
I hope that you will reconsider this terrible idea.
Thank you,
Gigi Pilcher, Blue Star Mother- Ketchikan, Alaska
Proud Mom of Sgt. Zachary Pilcher, U.S.M.C.

Subject: Withholding PFD checks to soldiers and students
Date: Wed, 31 Mar 2004 10:06:17 -0900
From: "Donn Ketner" <donnmketner@hotmail.com>
To: Representative_Paul_Seaton@legis.state.ak.us
CC: truenorthventures@gci.net

Withholding checks from soldiers and students until they prove they intend to reside in Alaska is not a good idea. Soldiers need all the support that they can get, as do students. A person born and raised in Alaska deserves to be supported in either of these situations. The State pays alcoholics and bums the PFD check just for being in State even if they are burden on society.
PLEASE DO NOT WITHHOLD FUNDS FROM THOSE PEOPLE FIGHTING FOR OUR COUNTRY AND THOSE TRYING TO DO SOMETHING WITH THEIR LIVES.

Subject: Bill to delay payment of PFD to soldiers and students
Date: Wed, 31 Mar 2004 10:18:23 -0900
From: "Donn Ketner" <donnmketner@hotmail.com>
To: Representative_Norman_Rokeberg@legis.state.ak.us
CC: Representative_Paul_Seaton@legis.state.ak.us

To the Honorable Representative Norman Rokeberg,
Representative Seaton of Homer has introduced a bill to withhold PFD checks from soldiers and students until they return to Alaska to live for one year. (no interest)
BAD IDEA. Soldiers born and raised in Alaska who are fighting for our country need all the help they can get.
Also students need $$ for college and are making something of their lives. Yet the State continues to pay alcoholics and those who choose not to work and are a drain on our community and resources? I am a voter in your district and admire the work you have done. I am sure you will do the right thing and kill this bill.

Sincerely,
Donn Ketner
3884 Caravelle Drive
Anchorage, Alaska 99502

Subject: HB 547
Date: Wed, 31 Mar 2004 11:48:16 -0900
From: "Sara Faulkner" <faulkner@pobox.alaska.net>
To: <Representative_Paul_Seaton@legis.state.ak.us>

4621 West Hill Road

Homer, AK 99603

March 31, 2004

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

Dear Representative Seaton,

I am writing in response to the article in today's Anchorage Daily News regarding House Bill 547 and its proposed changes to the Permanent Fund dividend for students attending school out of Alaska. I strongly oppose these changes for many reasons.

House Bill 547 proposes to penalize Alaska's future leaders. These students depend on the Permanent Fund dividend to help pay for their educational expenses. Many of these students have opted for a more expensive education outside Alaska because the quality and/or programs they seek to pursue are not available here. Like the rest of us, these students must sign that they are Alaska residents and intend to return here to live. Their families live in Alaska. This is their home. Why penalize them for trying to better themselves, to bring their gains home?

While I understand your proposal is to pay the back dividends upon their return to Alaska, this is too late for many of these kids. They need the money while they are in school to pay for their education, not later.

I respect and appreciate your intent to crack down on dividend fraud. I am not sure of the current requirements for a student out of state to collect dividends, but here are some of my ideas for an alternative proposal:

1. Did the student collect a dividend the year prior to leaving the state for education? If so, this shows that the student's home is Alaska at the time that he left for educational reasons, and I would still consider this student an Alaskan resident to qualify for current dividends.

2. Is the student enrolled in a different state's educational system as an in-state resident to receive reduced in-state tuition? If so, then I agree that the student should not qualify as an Alaskan resident, nor receive a dividend. This is effectively double-dipping residency and should not be allowed.

3. If over 18 years of age, is the student a registered Alaskan voter? If over 16 years of age, does the student have an Alaskan driver's license? If over 14 years of age, does the student have an Alaskan driver's permit? Each of these helps to define the student's identity and commitment to Alaskan residency.

4. Does at least one of the student's parents live in Alaska and qualify for a dividend? This helps define the student's home. If the family has left Alaska and is living in another state, it weakens his argument that Alaska is his home. If a student has lived in Alaska prior to leaving for education, and his family still lives in Alaska and qualifies for a dividend, then I would still consider Alaska his home.

Many of the students who depend on the dividend for education have lived in Alaska their whole life. When budgeting for education the family has depended on the dividend to help finance the costs. To delay dividend payment for these kids limits their educational choices, as many families cannot qualify for additional loans to finance the gap left when stripped of the dividend.

I am also opposed to blackmail as a way to motivate people. The way to motivate these students to return to Alaska is to provide a strong economy where they can find jobs. Focus on the positive aspects of Alaska and what we have to offer these kids when they come back. I think many of these students want to return to Alaska, but they have trouble finding good jobs. Let's be competitive economically, and make it possible for these kids to come back. In my husband's family all seven children were born and raised in Anchorage, all left Alaska for schooling, and now all have returned to raise their families in Alaska. They came back because they wanted to be here and share this life with their kids, not because they were blackmailed into coming back. They came back happily, not bitter and angry. The last thing I want in Alaska are a bunch of bitter college graduates, waiting out their one year probationary period on unemployment so that they can collect their past dividends. Focus on the positive, and the building of opportunities, rather than negative, unwelcoming threats.

I strongly urge you to reconsider House Bill 547 and its implications for our State's students. Don't strip them of their opportunity to improve themselves. Today's students are tomorrow's leaders; let's do all we can to support their hard work and determination to lead us into a better Alaska in the future.

Sincerely,

Sara Faulkner

Subject: general
Date: Wed, 31 Mar 2004 13:34:50 -0800
From: "candy" <candy@xyz.net>
To: <Representative_Paul_Seaton@legis.state.ak.us>

Greetings Paul, I want to voice our strong opposition to the HB547 that would defer PFD payment to students that pursue educational opportunities outside the state of Alaska. Many families and students depend on the PFD to finance their education so they can return to Alaska and be productive.We are not in favor of the deferred payment for students. Jim and Candy VanOss

Subject: PFD fraud
Date: Wed, 31 Mar 2004 07:24:36 -0500
From: "JMSegalla" <msegalla@maine.rr.com>
To: <Representative_Paul_Seaton@legis.state.ak.us>

Dear Mr. Seaton,

I read with interest the article in the Anchorage paper about the house bill you are sponsoring concerning the PFD and out-of-state Alaskans. As the spouse of an active duty military member, I am sorry you feel that way about us. As much as we love the state of Alaska, and can't wait to move back there, my husband has very little choice about where he is stationed. We've been stationed in Alaska for a total of 6 years over 2 duty stations, and would love to come back.

We very much plan to move back to Alaska as soon as we can. Whether it's with the military or after my husband retires, we WILL be back in state. I am tired, though, of feeling like "less than a citizen" because of sentiments like yours. I am tired of having to justify and fight for my right to be called an Alaska citizen. It's just that kind of mentality that will keep us away. If we don't feel welcome, WHY would we come back???

If the legislature wishes to use the Permanent Fund on government, then I'm sure you will find a way to do that. Nothing any public citizen does will stop you. I have great shame that the Honorable Governor, a retired military member himself, has said nothing. I find it interesting, too, that in your bill, the Alaskan Congressional delegation would be exempt. I guess the duties of the Honorable Ted Stevens are much more important than those of active duty military dying for your country. And once again politics speaks louder than any person.

Sincerely,
Megan Segalla

Subject: PFD Bill
Date: Wed, 31 Mar 2004 11:35:19 -0500
From: "Brian Martin" <brianmartin@sofast.net>
To: "The Honorable Paul K. Seaton" <Representative_Paul_Seaton@legis.state.ak.us>

Brian Martin
914 Joshua St
Great Falls, MT 59405

March 31, 2004

The Honorable Paul K. Seaton
House of Representatives, Room 428
Juneau, AK 99801-1182

Dear Representative Seaton:

Mr. Seaton,
I am writing you in response of your new bill to cut down on PFD frauds. While I do agree with you that there needs to be something done to stop people from abusing the system I am extremely disappointed with your proposal to keep military members from getting their dividends until they return home. As a member of the Air Force I am proud to serve my country, but I have very little if any control over where I can live, the needs of the Air Force must come before my own. I still own a home in Alaska and am trying very hard to keep it so I will have somewhere to live once I am allowed to move back. I have always felt that the state of Alaska strongly supported our military folks, but I must say that as read the paper this morning I felt very betrayed by my state. My family counts on the dividends every year. We have been trying to invest that money for our children to attend college since we will more than likely not be able to afford it any other way. Not only would your proposal not allow us to do continue doing so, but also we would not receive interest on the money we missed. How somebody could put a bill forward that would take money away from our military families in this day and age is completely beyond me, and I believe you and your piers who plan to vote for this bill should be ashamed of yourselves. Another thing that is puzzling to me is why is the Alaska Congressional Delegation more important than the men and women of our armed service? While I agree that Senator Stevens is a great man who has done a lot for our state he certainly does not need the extra money as much as our military folks do. I guess it is much easier to pick on the little guy. I guess I don't need to say I hope you will reconsider your bill. While it may look good on paper is it worth it when you consider the families you are going to hurt.

Very Respectfully
Brian Martin

Sincerely,

Brian Martin

Subject: HB 547
Date: Wed, 31 Mar 2004 07:47:10 -0900
From: Genie Bill and Madelin Siedler <siedler@mtaonline.net>
To: <representative_paul_seaton@legis.state.ak.us>

I read with great dismay today that your bill plans on holding the PFD checks of worthy Alaskans because you don't trust them. The Alaskans we are talking about are thousands of struggling college students, military families, terminally or seriously ill Alaskans and their families. I don't see the benefit of denying them their money when it is due. They won't need it later, most of them need it now! I see this bill as petty, bureacractic, greed driven, and unfair. It represents the worst of the abuse of power of the state. For the few that may be bilking us you plan on punishing the rest, who happen also to be Alaskans who are most in need of our support. I have no college students who qualify for the PFD, I am not military and at the moment do not need to be out of state because of family illness. I just don't think it is in the right spirit of the majority of Alaskans. I urge you to reconsider this idea.

Subject: **HB 547 PFDs for tudents/military/mailbox holders**
Date: Wed, 31 Mar 2004 09:51:33 -0900
From: Pat Johnson/Anne Kilkenny <kiljohn@gci.net>
Reply-To: Anne Kilkenny <annekilkenny@hotmail.com>

STUDENTS. Many high school graduates CHOOSE to turn down free tuition at our University for colleges outside; if they choose to turn down a tuition-free education here, they can also wait for their PFD check until they return. This will slow the "brain drain".

However, I think there should be a reasonable amount of interest added to PFD checks held.

MILITARY. I don't think the military should be treated differently from everyone else; everyone living/moving outside must SHOW an intent to return. To show "intent to return" one must prove ownership of a year-round inhabitable dwelling with an annual property tax assessment in excess of the amount of the PFD. This should be required of everyone having a check sent to an outside address. Proof of ownership and PFD eligibility could be verified by property tax rolls.

I also like the idea of holding their PFD check until they return. Again, I think there should be a reasonable amount of interest added.

POST OFFICE BOX HOLDERS should be required to show that they are residents, either by indicating their property tax account number, or getting their landlord/building manager to verify their tenancy in a rental unit.

ADDING INTEREST won't cost us much, as unpaid dividends will continue to earn interest for the State.

Thorny issue--someone will always be hurt and slip thru the cracks, and there will always be cheaters.

Anne Kilkenny
376-6225

Interest

Thanks for your ear,
Brian Fleming
Illinois Institute of Technology

Subject: House Bill 547
Date: Wed, 31 Mar 2004 09:39:03 -0600
From: "Brian T. Fleming" <flembri@iit.edu>
To: Representative_Paul_Seaton@legis.state.ak.us

Greetings.

I'm an Alaskan born boy who is currently attending college in Chicago. Last summer I worked at Boeing in Seattle. All evidence would seem to suggest that I probably won't be returning to Alaska after I graduate.

That doesn't mean that I don't want to. I love my home state more then anything. Nearly every day for the past 5 months I've tried desperately to try to find interesting work for an Aerospace Engineer that fits my interests. I met with the CEO of the Alaska Aerospace Development Corporation in person during my spring break just two weeks ago. I've written the UAF department of Engineering suggesting that with the University's close proximity to the Poker Flats research range (hence, rockets) that an Aerospace Engineering program would be a strong yet simple addition to their already above average programs (and create jobs for people like me to be professors). I've written the governor and our US Senators. In my head I've been fighting the same battle for three years now; Do I follow my career dreams and leave the land I love or do I sacrifice the goals that I've had since I was two and settle for a sub-par Engineering job well beneath my training and capabilities to st
ay in Alaska.

This Conundrum is not unique to me. I know at least 8 other Alaskans at my University alone who feel exactly the same and many more friends from High School around the nation in all sorts of different majors. The Alaskan brain drain is not the result of our young growing up and wanting to leave, but rather the result of us being forced to make this very difficult choice.

When I read about House Bill 547 this morning on adn.com, I was actually very pleased with it. I've been following the news as closely as I can from 2849 miles away and I agree that too much pfd money is being sent out of state, although I believe that the biggest drain is due to people who work seasonal jobs (such as fishermen) and then leave state for the winter. I know more then a handful of people who do this and still receive a dividend.

What dismayed me was that the article said "An incentive is needed to help retrieve them, Seaton said, and a waiting pile of dividend checks might just be it."

It's not about the money. Contrary to what many lower 48'ians might believe, nobody ACTUALLY lives in Alaska because they get a $1000+ check every year for it (the aforementioned fishermen, miners, oil workers etc. excluded). The only thing that will stem the brain drain is jobs. Real jobs. Jobs that are interesting and have real world impact.

I have a slew of suggestions ranging from building a particle accelerator in Fairbanks to incentives for manufacturing companies (we produce very little that isn't a raw material), but I won't list them all now. My point in this all is that while I support the spirit of initiatives like House Bill 547 because it helps keep money in Alaska where it belongs (though it would mess up my finances), the same amount of students will leave the state as before.

$1500 again, that would be about $25M held back in Alaska. Since these "ex-pat Alaskans" won't see a dime of interest on their PFDs, at 5% that is an extra $1.25M dribbling into some state coffer.

Is it worth $1.25M/year to alienate those very students and veterans from returning to Alaska?

I would love to see the Legislature propose some real incentives for students to return to Alaska. The ACPE's new AlaskAdvantage student loan programs are a step in the right direction, offering interest rate incentives to return to Alaska. But to offer real incentives will cost real money, and I don't expect to see the return of loan forgiveness programs anytime soon. Withholding PFDs is not a "carrot", it is a "stick". It is not an incentive to return to Alaska; it is punishment for pursuing higher education in the first place.

This law, if passed, will not apply to me since it is dated to take effect on Jan 1 2005. I will be back in Alaska by this time. But for the 16,999 other "ex-pat Alaskans", this will come as a heavy blow.

Please kill HB547.

David Prentice

Subject: [Fwd: pern fund overhaul]
Date: Wed, 31 Mar 2004 16:02:49 -0900
From: Lauren Radcliffe <Lauren_Radcliffe@Legis.state.ak.us>
Organization: Alaska State Legislature
To: Chris Knight <Chris_Knight@legis.state.ak.us>

Subject: Re: perm fund overhaul
Date: Wed, 31 Mar 2004 16:00:41 -0900
From: Paul Seaton <Representative_Paul_Seaton@Legis.state.ak.us>
Organization: Alaska State Legislature
To: The Spragues <sprague@alaska.com>

Hi Jack,
Thanks for the note. The fraud aspect is important, but I think it is equally important to give people any incentive we can to return to the State.
Thanks again.
Paul Seaton

The Spragues wrote:

> *Paul. I am not a completely blank name.....You bought my steel scow*
> *, which now resides in Homer Harbor. I sat with you on the Aquaculture*
> *board years ago. Anyway enough of identification. I think your idea*
> *regarding the permanent fund is right on track. You can't know how*
> *many service people , teachers, etc. that are ripping off the*
> *system. I feel that your idea of holding the check for a year after*
> *return of these "residents" will solve several problems.. It will*
> *provide a bit of money for the state, make honest folks out of a lot of*
> *people and reward those who are sincere about returning to the state. I*
> *support the idea 100%. Nice talking to you. Keep doing a good*
> *job. Jack Sprague sprague@ alaska .com*
>
>

Lauren C. Radcliffe <Lauren.Radcliffe@legis.state.ak.us>
Legislative Aide
Office of Representative Paul Seaton
1-800-665-2689

Subject: PFD Payment hold
Date: Thu, 1 Apr 2004 03:28:56 -0900
From: "Stevens, Brian D" <StevenBD@BP.com>
To: <Representative_Paul_Seaton@legis.state.ak.us>

Dear Representative Seaton;

BRAVO!
I congratulate you on sponsoring the bill to hold PFD payments until people return to the State.
This is a long overdue action that, I hope, will make it's way to the Governor and his approval.
For too long, people been receiving these payments with no intention of returning to the State. Finally, someone has stood-up and offered a solution to the ongoing unchecked cases of fraud.
In regards to the military, I was in the Coast Guard for eleven years and spent most of my time in Kodiak. Perhaps there could be some language in the Bill stating that payments would be held until the military member could return and resume their residency. This way, even if they could not get stationed in the State, their money would be waiting here for them when they were discharged or retired.

Once again, thank you and I wish you the best of luck with your proposal.

Respectfully,

Brian D. Stevens
11500 Bells Flats Road
Kodiak, AK 99615

Subject: PFD Proposal
Date: Thu, 1 Apr 2004 07:07:05 -0900
From: Ann Bayes <bayes@xyz.net>
To: Paul Seaton <representative_Paul_Seaton@Legis.state.ak.us>
CC: Chris_Knight@Legis.state.ak.us

Hi Paul,

Your proposal to withhold dividends from college students and others until they return to Alaska has merit, but I strongly object that there would be no interest or investment earnings attached when they return and become eligible to receive them.

Why not pool those funds and create an investment share, the value of which would fluctuate based on earnings/losses of the pooled PFD $$'s being held and invested? You would then also teach them how investing for the future really works. If the average student spends 5 years Outside, he/she will have enough years of investing to weather the historical average for stock market dips. When interest rates are as low as they are now, conservative investors don't make but a few percentage points worth of interest on certificates of deposit, but that has not been nor will it always be the case. Like the fund itself, there would be years of potential losses.

Our two daughters chose to return to Alaska after college; David plans to do the same. During their college years, Michelle's and Erica's PFD's were allowed to earn for them so that they had money to payoff student loans when they graduated. This in turn is allowing them to become taxpaying home owners while accepting whatever jobs the local economy has to offer. David has invested his money in the startup of his Alaska-based fishing charter business while still in school. In the past 12 months, the State of Alaska has received an amount in licensing and fees equal to or greater than his PFD of 2003, the Kenai Borough has received sales tax revenue, and the local economy has seen purchasing of goods and services equal to his lifetime worth of PFD's.

Do not punish the students/residents who do want to come back and use their PFD funds wisely while tightening up on those who don't.

Thanks,
Ann and Bruce

Subject: [Fwd: dividend moneys]
Date: Wed, 31 Mar 2004 15:49:19 -0900
From: Homer LIO <Homer_LIO@legis.state.ak.us>
To: Representative Paul Seaton <Representative_Paul_Seaton@legis.state.ak.us>

I have forwarded your email to Representative Paul Seaton. -charlene

---

Subject: dividend moneys
Date: Wed, 31 Mar 2004 14:29:00 -0900
From: "goshorn" <goshorn@acsalaska.net>
To: <Homer_LIO@legis.state.ak.us>

Sir my son was in army in 1986 ,he recieved may be 2 checks , then he was sent a form to fill out , he could not remmber all the dates that were required on the form , and so he gave them up . we didnt know that he could have kept getting them. I believe that most will not return to alaska ,there fore i believe that your idea is agood one. Thank You Maxine Goishorn

Subject:
Date: Wed, 31 Mar 2004 19:48:23 -0500
From: "Frank, Dan" <DFrank@ene.com>
To: "'Representative_Paul_Seaton@legis.state.ak.us'" <Representative_Paul_Seaton@legis.state.ak.u

Dear Representative Seaton,

Although I do not live in your district, I did meet you during the ACV fly-in two weekends ago. You struck me as thoughtful and balanced. I am writing you to express my support for HB 547. I think it is an excellent idea. How is this for an idea: bank all PFDs for those under the age of 18, and pay out only when they graduate from high school, or have a documented disability proving their inability to complete high school. Any money left goes back to education.

Respectfully,

Dan Frank
1105 East 11th, Apt. 3
Anchorage, AK 99501

Subject: HB 547
Date: Fri, 2 Apr 2004 09:37:05 -0900
From: "Richard Hahn" <rdhahn@eagle.ptialaska.net>
To: <Representative_Paul_Seaton@legis.state.ak.us>

Dear Mr Seaton, HB 547 should have been introduced years ago. The need to reduce access to the PFD by anyone who can get it simply by saying they will return to Alaska "sometime" is long overdue. I strongly support your bill!! However, I don't think it goes far enough. Based on my observations of "snowbirds" in my community, I believe that PFD fraud is rampant in Alaska and ENFORCED safeguards are necessary to save the State even more money. I would guess that 3-5 State investigators would much more than pay their salaries with reviews of documentation of people who claim they are residents but spend only 4-5 months (or less) per year in State--and claim the PFD anyway. Alaska has become very lax about the PFD residency enforcement and opportunistic people take advantage of that. I would even be so bold as to suggest the PFD residency requirement should be 9 months per year instead of 6 months. In any event, I am glad you had the intestinal fortitude to try to save the State some money without penalizing working Alaskans. Thank You!! Sincerely, Dick Hahn

Richard Hahn
P.O. Box 2754
Soldotna, Alaska, 99669
907-262-8575
rdhahn@eagle.ptialaska.net

Representative_Bill_Stoltze@legis.state.ak.us,
Representative_Bruce_Weyhrauch@legis.state.ak.us,
Representative_Bill_Williams@legis.state.ak.us,
Representative_Peggy_Wilson@legis.state.ak.us,
Representative_Kelly_Wolf@legis.state.ak.us, Senator_Con_Bunde@legis.state.ak.us,
Senator_John_Cowdery@legis.state.ak.us, Senator_Bettye_Davis@legis.state.ak.us,
Senator_Fred_Dyson@legis.state.ak.us, Senator_Johnny_Ellis@legis.state.ak.us,
Senator_Kim_Elton@legis.state.ak.us, Senator_Hollis_French@legis.state.ak.us,
Senator_Lyda_Green@legis.state.ak.us, Senator_Gretchen_Guess@legis.state.ak.us,
Senator_Lyman_Hoffman@legis.state.ak.us, Senator_Georgianna_Lincoln@legis.state.ak.us,
Senator_Scott_Ogan@legis.state.ak.us, Senator_Donny_Olson@legis.state.ak.us,
Senator_Ralph_Seekins@legis.state ak.us, Senator_Bert_Stedman@legis.state.ak.us,
Senator_Ben_Stevens@legis.state.ak.us, Senator_Gary_Stevens@legis.state.ak.us,
Senator_Gene_Therriault@legis.state.ak.us, Senator_Thomas_Wagoner@legis.state.ak.us,
Senator_Gary_Wilken@legis.state.ak.us, Shawn Jackinsky <tavarish@acsalaska.net>,
James Matlock <jandk@mtaonline.net>, aianderson@anmc.org,
Shawn Jackinsky <tavarish@acsalaska.net>

This bill makes great sense. A military person can come to Alaska, Claim to be an Alaska resident and get PFD. Never vote, Get Alaska Auto tags or establish any of the thing that are required to show residency. When the are reassigned they and thier families contitue to collect PFD. Many of these never reurn to Alaska. I know many of these people.

Subject: Hooray!
Date: Thu, 01 Apr 2004 14:35:19 -0900
From: PATRICIA L WIGHTMAN <patti_wightman@dot.state.ak.us>
Organization: Alaska DOT & PF
To: Representative_Paul_Seaton@legis.state.ak.us

Representative Seaton: I also have long been disgusted with the law that allows folks to move outside the state and continue to collect PFD's. I have heard from a few military folks that when they move up here, they can change their Home of Record to Alaska, then, when they are sent out of state, they can continue to collect the permanent fund until they get out of the military or retire from the military and choose not to come back to Alaska. It's outrageous. I am proud of you for addressing this issue. I have to say, though, that to make an exception for congressional delegates doesn't seem fair to me either. They should be aware when they run for office that if they are elected, it means giving up the PFD.

Wightman, Patricia <patti_wightman@dot.state.ak.us>
Regional Enironmental Coordinator
DOT&PF
Environmental

WILSON'S
GUIDED
SPORTFISHING
Kings Silvers Halibut

Jim Wilson / Guide

March 30, 2004

Rep. Paul Seaton
State Capitol, Room 428
Juneau, AK 99801-1182

Dear Representative Seator.

Your House Bill 547 is long overdue.

I am reminded of the elderly gentleman I met on a flight from Seattle to Anchorage some years ago. During our discussion, he proudly told me that he and his wife were retired and had left Alaska to live in Phoenix, Arizona, but they continued to collect their Alaska Longevity Bonus and Permanent Fund checks. Although we were on a civilian flight, he told me that as retired military, he usually flew at no cost to Anchorage on military aircraft to pick up and deposit the monthly checks that were mailed to c· ·his rental properties. Since the rental property was leased by a friend, he also had a ·isit with him and other old friends and, in effect, was receiving a paid vacatior

Since then, I have met several active military personnel through my business who receive Permanent Fund Dividend checks. Yet, during our discussions it became obvious to me that they had no intention of returning to Alaska after the completion of their military service. And yes, we are all grateful for their service, but fraud is fraud no matter how it presents itself. In effect, it seems to me that Alaska's military bases are producing a growing number of PFD recipients who must marvel at their good fortune when they and their families leave Alaska, knowing they will not return but will collect payments for many years to come.

The bottom line: I support your Bill as a positive step in the right direction and I hope it leads to additional measures that will distribute Alaska's wealth only to permanent residents of Alaska.

Sincerely,

Jim Wilson

Cc: Sen. Ben Stevens
Sen. Johnny Ellis
Rep. John Coghill
Rep. Ethen Berkowitz

P.O. Box 4386 Soldotna, Alaska 99669 (907) 260 - 4838

Subject: Withholding of PFD--Military, etc.
Date: Mon, 05 Apr 2004 03:34:44 -0800
From: "Keith Muschinske" <keithmuschinske@hotmail.com>
To: Representative_Paul_Seaton@legis.state.ak.us

Rep Seaton,

As an Alaska resident and one who would be directly affected by the bill you have recently introduced, let me say both my wife and I wholeheartedly SUPPORT your efforts. I am currently serving in the military and will probably be "stuck" Outside for another eight years or so before we can return home. My family became residents immediately upon arriving in Alaska in July, 1999--I truly wish I'd visited Alaska 25 years ago because there is no doubt I would have remained there all those years.

I suggest the PFDs of those in the military like me who have become residents of Alaska "primarily" by virture of being stationed there be withheld until our return. There is no question many in the miltary take the PFD without any intention of returning to Alaska; there is also no question there are those like us who have already bought land in Alaska and live for the day we can return--from such remote Outside locations as Alabama!

Keith Muschinske

Subject: PFD
Date: Wed, 31 Mar 2004 13:25:55 +0000
From: "John Neale" <neale_john@hotmail.com>
To: Representative_Paul_Seaton@legis.state.ak.us

Mr Seaton, I'm writeing this e-mail to say I support your house bill 547. Myself and my family have been receiving the PFD since 1983. I support anything that would stop the stealing of the PFD by nonqualified persons.
John Neale, Palmer Alaska

Subject: perm fund overhaul
Date: Wed, 31 Mar 2004 08:56:29 -0900
From: The Spragues <sprague@alaska.com>
To: Representative_Paul_Seaton@legis.state.ak.us

Paul. I am not a completely blank name.....You bought my steel scow , which now resides in Homer Harbor. I sat with you on the Aquaculture board years ago. Anyway enough of identification. I think your idea regarding the permanent fund is right on track. You can't know how many service people , teachers, etc. that are ripping off the system. I feel that your idea of holding the check for a year after return of these "residents" will solve several problems.. It will provide a bit of money for the state, make honest folks out of a lot of people and reward those who are sincere about returning to the state. I support the idea 100%. Nice talking to you. Keep doing a good job. Jack Sprague sprague@ alaska .com

Subject: Comment on Bill 547
Date: Wed, 31 Mar 2004 10:48:42 -0900
From: Jerry Quinn <mightyquinn@gci.net>
To: Representative_Paul_Seaton@legis.state.ak.us
CC: Representative_Bob_Lynn@legis.state.ak.us,
Representative_Bruce_Weyhrauch@legis.state.ak.us,
Representative_John_Coghill@legis.state.ak.us,
Representative_Max_Gruenberg@legis.state.ak.us, scockerham@adn.com

Mr. Seaton,

I read the article in the Anchorage Daily News about your proposal to hold the PFD check for out-of-staters. At first glance, I thought it was a great idea to thwart those individuals who continue to apply for the fund with no intention of returning to Alaska. I agree that fraudulent applications would have to decrease when people realize that the only method to collect the PFD would require them to relocate back to the state. The reason I'm writing to you is to comment on the proposed exclusion of congressional staffers from this plan. Once again, I see a situation where the rule makers omit themselves from the rules. I do not believe that Ted Stevens is eagerly awaiting his PFD check to help pay his bills. It appears that you would expect students and military personnel to delay their check while those who are better paid would be allowed to collect immediately. Lets not destroy a good idea by playing favorites. If this plan is to be successful, we should enforce it across the board. I am certain that our public servants in DC can afford to wait until their return to the state.

Thanks for your time,

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

Jerry Quinn

Anchorage

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 547
(H) Publish Date: 4/7/04

Revision Date/Time (Note if correction):
Dept. Affected: Revenue

Title: PFD: Delay Payments for Allowable Al Absences
RDU: Revenue & Program Support
Component: Permanent Fund Dividend
Sponsor: House State Affairs
Requester: House State Affairs
Component No.: 981

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	50.0					
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	50.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other PFD Fund	50.0					
TOTAL	50.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

HB 547 delays payments of dividends for Alaskans who are out of state on specified allowable absences. Payments would be delayed until the individual returns to Alaska and would be paid on the first subsequent year that the individual is eligible for a dividend without claiming any of the specified allowable absences.

If an individual fails to be eligible for a subsequent year dividend, the individual's eligibility for the delayed dividends is terminated and the dividends may not be paid.

Prepared by: Paul E. Dick
Phone 465-4784
Division: Permanent Fund Dividend Division
Date/Time 3/30/04 7:53 AM
Approved by: Steve Porter, Deputy Commissioner
Date 3/30/2004
Agency: Department of Revenue

Alaska State Legislature

House of Representatives

STATE AFFAIRS COMMITTEE

Official Business

State Capitol
Juneau, AK. 99801-1182

Sponsor Statement

HB 547

"An Act relating to the dividends of individuals claiming allowable absences; and providing for an effective date."

The Alaska Permanent Fund Dividend was initiated to provide Alaskans with a share of the state's resource wealth, primarily derived from oil. As dividend values increase, the number of allowable absences also has increased. While receiving dividends out of state, many valuable Alaskans become highly educated and highly trained. Very few of these people ever return back to Alaska. To encourage our best and brightest to return, HB 547 simply asks individuals to return to the state in order to collect their dividends.

Individuals collecting dividends out of state, leave little in net return to Alaska. In 2003, roughly 17,000 dividends were paid to people living out of state, removing $19 million directly from the state's economy. With a dividend in the amount of $1963 in 2000, roughly $30 million left the state.

The system for paying dividends out of state is based on statutory absences created by the legislature. Unfortunately, the absences listed by statute are the only allowable absences, thus disadvantaging other Alaskans, who also wish to leave the state for other reasons. Nothing in the bill changes the eligibility requirements with regards to allowable absences. HB 547 creates a fair an equitable dividend system by requiring all people applying for dividends out of state to return to Alaska for one year in order to collect their dividends.

Distributing dividends in Alaska through HB 547's one-year return requirement, suggests that more money will be spent in Alaska. Knowing that a sizable nest egg had accrued in absence, HB 547 might encourage college graduates and our technically trained military personnel to return home. By distributing more dividends in state, HB 547 seeks to remedy Alaska's brain drain, while potentially pumping more money into the state's economy.

HB 552

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State Capitol, Room 507
Juneau, AK 99801-1182

DIFFERENCES BETWEEN HB 552 AND WORK DRAFT 23-LS1802\I, dated 4-20-04

Deleted all references to the Alaska Gaming Commission and its supervision of charitable gaming found in or related to **AS 05.15.**

Deleted Section 2 from the original bill that gave authority to the Alaska Gaming Commission to suspend a license or permit for a violation of AS 05.15.

Deleted Section 3 from the original bill that gave authority to the Alaska Gaming Commission to administer the provisions of AS 05.15.

Deleted Section 4 from the original bill that provided a definition of the Alaska Gaming Commission under AS 05.15.

Page 2, line 21: Provided a definition of a public officer of the state and gave it the same definition found in AS 39.52.960.

Page 3, line 2: Further defined the grounds for removal of a commissioner. This includes the failure of a commissioner to attend at least 50% of the meetings in any 12-month period.

Page 5, line 27: Provided an appeals process which allows a person to seek judicial review of a final administrative order of the commission as defined in AS 44.62.560 and 44.62.570 (judicial review under the Administrative Procedures Act).

Deleted subsection 10 on page 10 of the original bill that required a person applying for an owner's or supplier's license to provide information of the amount, date and method of payment of political contributions, loans, donations or other payments to a candidate or office holder for the previous five years before the date the person applied for a license.

Page 11, line 13: Added subsection (i). Requires an applicant for a license to submit to the commission, fingerprints and fees required by the Department of Public Safety for

criminal justice information and a national criminal history record check. The commission is then required to forward fingerprints and fees to the department for a report of criminal justice information under AS 12.62 (Criminal Justice Information Systems Security and Privacy) and a national criminal history record check. The results will be used to then evaluate applicants.

Page 16, line 5: Clarified language that any income earned on the principal of a cash or negotiated securities bond will be paid to the benefit of the licensee.

Page 16, line 25: Rewrote subsection (h) for clarity purposes.

Page 30, line 22: Added security and surveillance services and supplies and money counting services and supplies to the definition of supplier's license.

Deleted Sections 10 and 11 from the original bill. Section 10 repealed the definition of department (Department of Revenue) since the commission was to provide supervision of charitable gaming activities. Section 11 instructed the revisor to change references to the commissioner and department in AS 05.15 to commission.

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SPONSOR STATEMENT

HOUSE BILL 552: *"An Act relating to gambling and gaming."*

House Bill 552 establishes an Alaska Gaming Commission, designed to regulate, oversee and enforce statutes pertaining to gaming, as defined under AS 05.15, and gambling, which is established within this bill.

The bill also sets in place new statutes that authorize the commission to issue a license to own and conduct gambling games at a specified gambling facility in any municipality within the state with a population of at least 150,000.

The commission through a new chapter, AS 05.18 provided within the bill, would administer, regulate and enforce licensing for a gambling facility, its employees and suppliers. Fees and taxes will be collected by the commission and placed into the state gaming fund which would consist of all revenue received from gambling activities. This fund would then be used to pay for any activity conducted by the commission and other agencies as it related to gaming and gambling.

The state would collect a seventeen percent tax on adjusted gross receipts received from gambling games. The municipality where the gambling facility is located is also able to collect a tax of not more than three percent of the amount of adjusted gross receipts.

House Bill 552 established new Class C felonies and Class A misdemeanors for crimes related to associated gambling operations and activities.

Currently, 48 of the 50 states have some form of legalized gambling and over half have casino gambling. This proposed legislation is intended to provide the tools to ensure strict supervision of any gambling and gaming activity authorized by the Alaska Gaming Commission.

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Juneau, AK 99801-1182

SECTIONAL ANALYSIS
HOUSE BILL 552: *"An Act relating to gambling and gaming."*

Section 1: Intent language stating that this bill is intended to benefit the people of Alaska by promoting economic development and tourism. Further states that the public trust and confidence will be maintained through comprehensive law enforcement supervision and strict regulation of facilities, persons, associations and gambling operations under AS 05.18.

Section 2: Amends AS 04.11.370(c). Suspension and revocation of licenses and permits. Replaces Department of Revenue with Alaska Gaming Commission.

Section 3: Amends AS 05.15.010. The Department of Revenue to administer this chapter. Replaces Department of Revenue with Alaska Gaming Commission.

Section 4: Adds a new paragraph to AS 05.15.690. Definitions. Adds Alaska Gaming Commission to the definitions section.

Section 5: Adds a new chapter to AS 05. The new chapter is AS 05.18, Gambling and the Alaska Gaming Commission.

Sec. 05.18.010. Gaming Commission established; membership.

(a) Establishes the Alaska Gaming Commission within the Department of Revenue.
(b) Commission consists of three members appointed by the governor with one designated by the Governor as chair. One member shall have law enforcement and criminal investigation experience and one member shall be a certified public accountant with experience in accounting and auditing. Not more than two members may be with the same political party or affiliation.
(c) Term of office is three years and is eligible to reappointment.
(d) Commission members entitled to receive a salary for each day the member attends a meeting or conducts a hearing and per diem and travel expenses.
(e) A person may not be appointed to the commission or continue as a commissioner if the person or person's spouse, child or parent is a member of a board of directors or financially interested in a gambling operation.

(f) Disallows a commission member from holding public office for which compensation other than travel expenses or incidental expenses are incurred.
(g) Outlines the conditions under which a person may not serve on the commission.
(h) Grounds for removal from the commission.
(i) Directs each member of the commission to provide a bond to the state in the amount of $25,000. The bond must be approved by the governor and recorded in the lieutenant governor's office. A commission member who does not provide the required bond within 30 days after being appointed or fails to renew the bond within 30 days after the governor requires a renewal shall be removed from the commission.

Sec. 05.18.020. Staff support; personnel.

(a) Allows commission to hire staff to carry out the commission's duties. A person may not be employed as a staff to the commission if the person's spouse, parent or child is a member of a board of directors or financially interested in a gambling operation.
(b) Allows the commission to employ or contract inspectors and agents required to carry out the duties of this chapter. The costs incurred by the commission are reimbursable by the licensed owner.

Sec. 05.18.030. Executive director; compensation; duties.

(a) The executive director of the commission appointed by the governor and serves at the pleasure of the governor. The governor approves the salary annually.
(b) The executive director performs duties as assigned by the commission.
(c) Outlines the statutory duties of the executive director.

Sec. 05.18.040. Meetings; records.

(a) States the commission will meet quarterly.
(b) The commission may call special meetings but 72 hours written notice must be provided to each member prior to the meeting.
(c) Two members constitute a quorum. Two affirmative votes are required to take official action.
(d) The commission is to keep a complete and accurate record of its meetings. These records are to be available to the public and accurately reflect all commission proceedings.

Sec. 05.18.050. Annual report.

(a) The commission will file an annual report before March 1 of each year. The governor may request additional reports.
(b) Lists what is to be included in the annual report.

Sec. 05.18.060. Hearings.

(a) If a majority of the commission approves, an administrative law judge appointed by the commission or a commission member may conduct a hearing and recommend findings of fact and conclusions of law to the commission.

(b) Describes that the rights, powers and duties of a commission member or an administrative law judge are the same as those granted to the commission. The commission may not limit the number of speakers who may testify but it may set reasonable time limits on the length of testimony or the total amount of time allotted to opponents and proponents of an issue before the commission.

Sec. 05.18.070. Administration, regulation and enforcement.

(a) Sets out the powers and duties of the commission for the purpose of administering, regulating and enforcing the gambling operations authorized under AS 05.18 and AS 05.15.
(b) Assistance provided by the attorney general and the Department of Public Safety to conduct background investigations of applicants. Costs incurred by these state agencies to be reimbursed by the commission from fees collected from applicants.
(c) Preferential hiring of residents.

Sec. 15.18.080. Violations; fees and taxes; inspections.

(a) Establish and collect license fees and taxes imposed under this chapter and deposit fees and taxes into the state gaming fund. Levy and collect penalties to be deposited into the state gaming fund. Be present through the commission's inspectors and agents during the time gambling operations are conducted.
(b) Allow the commission to enter an office, gambling facility or other premises of a person holding an owner's or supplier's license where evidence of compliance or noncompliance is likely to be found.

Sec. 15.090. Licensing.

(a) Adopt standards for persons regulated under this chapter and electronic or mechanical gambling games.
(b) Require that records, including financial statements, of a licensee owner or supplier be maintained in a manner prescribed by the commission.
(c) License may not be issued to a person convicted of a felony.
(d) Establishes information that must be provided by an applicant to the commission.
(e) Review by the commission and approve or disapprove applications promptly and in reasonable order of applications.
(f) Party aggrieved by a commission action denying, suspending, revoking, restricting or refusing a license may request a hearing before the commission. The request must be in writing ands not more than 10 days after service of notice of the commission's action.
(g) Notice of the commission's action must be made by personal delivery or certified mail.
(h) All requested hearings shall be conducted promptly and in reasonable order.

Sec. 05.18.100. Ejection or exclusion from facilities.

(a) Criteria under which a person may be ejected or excluded from a gambling facility.
(b) Allows a person who is ejected or excluded from a gambling facility the right to petition the commission for a hearing.

Sec. 05.18.110. Violations of chapter; fraudulent acts.
Actions the commission may take if a licensee or employee violates this chapter or engages in a fraudulent act.

Sec. 05.18.120. Investigative procedure; complaints.
(a) The commission shall review and make a determination on a complaint by a person who has been issued an owner's license concerning an investigative procedure that the licensee alleges unnecessarily disrupts gambling operations.
(b) The licensee filing a complaint must prove by clear and convincing evidence that the investigative procedure does not have a reasonable law enforcement purpose and is so disruptive that it unreasonably inhibits gambling operations.

Sec. 05.18.130. Transfer of licenses; rules of procedure; prohibitions.
(a) The commission must approve the transfer, sale or purchase of an owner's license. A licensed owner may not lease, hypothecate or borrow or loan money against an owner's license.
(b) Allows the commission to adopt regulations to establish procedures for the transfer, sale or purchase an owner's license.

Sec. 05.18.140. Suspension of license without notice or hearing; revocation of license.
(a) A license may be suspended without notice if it is determined that the safety or health of patrons or employees is threatened by the continued operation of the gambling facility. The opportunity for a hearing will be provided within a reasonable amount of time following a suspension.
(b) A suspension may remain in effect until the commission determines that the cause for suspension has been abated. The commission may revoke the license if the commission determines that the owner has not made progress in remedying the problem.

Sec. 05.18.150. Commission records.
(a) Details what information must be provided to a person who makes a written request.
(b) Allows the commission to assess fees for copying information that is requested.

Sec. 05.18.160. Owner's license.
(a) Gives the commission the authority to issue a license to own and conduct gambling games at a specified gambling facility in any municipality in the state that has a population of at least 150,000. Restricts a person to one owner's license at any time and allows only one owner's license within a municipality.
(b) An applicant must pay a nonrefundable application fee to the commission. The commission determines the fee.
(c) Requires an applicant to submit information as provided under AS 05.18.090 and two sets of fingerprints from an individual owner or two sets of fingerprints from each officer and director if a group applies for a license.

(d) The commission is to review applications for an owner's license and inform each applicant of their decision.
(e) Investigation costs of an applicant are to be included in the application fee.
(f) All additional costs associated with the investigation of an applicant that exceed the portion of the application fee are to be paid by the applicant.
(g) The commission may not issue an owner's license to a person if the person has been convicted of a felony, has knowingly or intentionally submitted an application containing false information; is a member of the commission; an officer, director, or a managerial employee of a person who has committed a felony or submitted an application with false information; or, employs an individual who has committed a felony, has knowingly or intentionally submitted an application containing false information or is a member of the commission.

Sec. 05.18.170. Factors considered in granting owner's licenses; submission of design.

(a) Criteria the commission will consider in determining whether or not to grant an owner's license.
(b) Requires the applicant to submit to the commission a proposed design of the gambling facility.

Sec. 05.18.180. Issuance of license; fee; bond.

(a) The commission may issue an owner's license if the person pays an initial license fee of $50,000 and posts a bond.
(b) A licensed owner is required to post a bond with the commission at least 60 days before starting the construction of a gambling facility or gambling, whichever is earlier. Describes the type of bond that is to be furnished.
(c) If a bond is furnished in cash or negotiable securities, the principal shall be placed without restriction at the commission's disposal, however, income earned on the principal shall benefit the licensee.
(d) The commission must approve the bond which is payable to the commission for use by the commission in satisfaction of the licensed owner's financial obligations to the community, state and other parties as determined by regulation established by the commission.
(e) If, following a hearing held after at least 5 days written notice, the commission determines that the amount of the bond is insufficient, the licensed owner shall file a new bond after the commission provides a written demand for such.
(f) The commission may require an owner to file a new bond in the same form and amount if liability on the old bond is discharged or reduced or in the opinion of the commission, a surety on the old bond becomes unsatisfactory.
(g) If a new bond is unsatisfactory, the commission shall cancel the owner's license. Should the new bond be satisfactory, the commission shall release the surety on the old bond from any liability accruing after the date of the new bond.
(h) A bond is released on the condition that the licensed owner remains at the site for which the license ifs granted for the lesser of five years or the date on which the commission grants a license to another licensed owner to operate from the site for which the bond was posted.

(i) A licensed owner who does not meet the requirements of the above section (h), forfeits a bond. The bond proceeds are paid to the commission for the benefit of the local governmental unit where the gambling facility is operated.
(j) The liability of the surety of a bond is limited to the amount specified in the bond. The continuous nature of the bond may not be construed as allowing for the surety under a bond to accumulate each time the bond is approved.
(k) A bond filed under this section is released 60 days after the time has run and a written request for release is submitted.

Sec. 05.18.190. Term of a license.
An owner's initial license expires five years after the effective date of the license and may be renewed for additional five-year periods.

Sec. 05.18.200. Revocation of owner's license for delay.
A license may be revoked if an owner begins operations more than 12 months after receiving the commission's approval of the application and the commission determines the revocation is in the best interest of the state.

Sec. 05.18.210. Renewal of owner's license; compliance investigations.
(a) Unless the commission determines an owner does not qualify to hold a license, the owner's license shall be renewed for an additional five-year period after a $50,000 renewal fee is paid.
(b) The commission must undertake a complete investigation of an owner every five years to determine the owner is in compliance with this chapter.
(c) The commission may investigate an owner at any time the commission determines necessary to ensure the owner is in compliance.
(d) The cost of the investigation or reinvestigation is borne by the owner.

Sec. 05.18.220. Other licenses.
A licensed owner may apply for other licenses necessary to the operation of a gambling facility to include preparation and serving of food and any other necessary licenses.

Sec. 05.18.230. Gambling equipment, devices, and supplies.
A licensed owner may own gambling equipment, devices and supplies and will file an annual report listing the inventories.

Sec. 05.18.240. Schools for training occupational licenses.
No prohibition for a licensed owner to operate a school for the training of those who need an occupational license.

Sec. 05.18.250. Nature of license.
An owner's license is a revocable privilege granted by the state and is not a property right.

Sec. 05.18.260. Supplier's license; requirements.
Gives the commission the authority to issue a supplier's license based on the commission's determination that the person is eligible and the applicant follows procedures outlined in this chapter.

Sec. 05.18.270. Gambling equipment and supplies; distribution.
(a) Person who has a supplier's license may sell, lease and contract to sell or lease gambling equipment and supplies to a licensee of a gambling facility.
(b) Gambling supplies and equipment must conform to standards adopted by the commission before distribution.

Sec. 05.18.280. Restrictions on issuance of supplier's license.
Defines who may not receive a supplier's license.

Sec. 05.18.290. Necessity of supplier's license; exception.
(a) A person is required to have a supplier's license before furnishing gambling equipment, devices or supplies to a gambling operation except as provided in the following subsection.
(b) A person with a valid license to deal in alcoholic beverages does not need a supplier's license in order to supply alcohol to a gambling operation.

Sec. 05.18.300. Sale or lease of equipment, devices, and supplies; information furnished to commission.
(a) Requires a supplier to furnish to the commission a list of all equipment, devices and supplies offered for sale or lease in connection with gambling games.
(b) Supplier must keep records for the furnishing of equipment, devices and supplies to gambling operations separate from records of other business operated by the supplier.
(c) Supplier to file quarterly return to the commission listing all sales and leases.
(d) Supplier's name is to be permanently affixed to all the supplier's devices, equipment and supplies for gambling operations.

Sec. 05.18.310. Forfeiture of equipment, devices, and supplies.
Supplier's equipment, devices and supplies used in unauthorized gambling operations are to be forfeited to the state.

Sec. 05.18.320. Repair of equipment, devices, and supplies.
Gambling equipment, devise and supplies provided by a supplier may be repaired in the gambling facility or removed for repair to a facility owned by the supplier.

Sec. 05.18.330. Renewal of supplier's license; compliance investigations.
(a) Supplier's license may be renewed upon payment of a renewal fee if the commission determines the supplier is in compliance and the supplier's license is not revoked, expired or suspended.
(b) Supplier is to undergo a complete investigation every 5 years to determine compliance.

(c) Commission may investigate a supplier any time deemed necessary by the commission.
(d) Costs of any investigation are borne by the supplier.

Sec. 05.18.340. Occupations requiring license.
Commission to determine which occupations related to gambling will be required to have a license.

Sec. 05.18.350. Occupational license; requirements; fees; duration; renewal; compliance investigations.
(a) Criteria for issuance of an occupational license.
(b) A licensed owner or supplier required to pay application and renewal fee for an individual applying for or renewing an occupational license. The owner or supplier may seek reimbursement of the application fee or annual license fee.
(c) License for occupational license valid for one year.
(d) The occupational license may be renewed annually upon payment of the fee if the licensee is in compliance and the license is not suspended, expired or revoked.
(e) Commission may investigate the holder of an occupational license at any time.
(f) The cost of an investigation of the person holding an occupational license is borne by the owner or supplier who may seek reimbursement from the occupational license holder.

Sec. 05.18.360. Qualifications for occupational license.
Individual requirements for an occupational license.

Sec. 05.18.370. Application for occupational license.
(a) The commission will prescribe forms for an occupational license containing all information required by the commission.
(b) Information to be provided for an applicant seeking an occupational license.
(c) Two sets of fingerprints required with an application for occupational license. The commission will charge each applicant the fee set by the Department of Public Safety for fingerprint searches.

Sec. 05.18.380. Restrictions on issuance of occupational license.
Conditions under which the commission may refuse to issue an occupational license.

Sec. 05.18.390. Suspension, revocation, or restriction of licenses.
Conditions under which the commission may suspend, revoke or restrict an occupational licensee.

Sec. 05.18.400. Schools for training occupational licensees.
(a) No prohibition for a licensed owner from entering into an agreement with a school approved by the commission for the training of an occupational licensee.
(b) Training offered by a school must be in accordance with a written agreement between the owner and school and approved by the commission.

Sec. 05.18.410. Training locations.
Training for an occupational licensee may be conducted in a gambling facility or at a school with which the owner has entered into an agreement.

Sec. 05.18.420. Convicted felons; rehabilitation; waiver.
(a) An individual applying for an occupational license who is disqualified due to a felony conviction may apply for a waiver of that disqualification. A license may be issued if the commission determines that the individual has demonstrated their rehabilitation by clear and convincing evidence.
(b) Factors that the commission must consider when determining whether an individual has demonstrated rehabilitation.
(c) Felony convictions that disallow a waiver.

Sec. 15.18.430. Gambling permitted in gambling facilities.
Gambling operations will only be conducted by a licensed owner in a gambling facility.

Sec. 05.18.440. Minimum and maximum wagers.
Commission to determine minimum and maximum wagers on gambling games.

Sec. 05.18.450. Inspection of gambling facilities.
Employees of the commission or officers of the Department of Public Safety may inspect a gambling facility at any time.

Sec. 05.18.460. Presence of commission employees in gambling facilities.
Commission employees have the right to be present in a gambling facility or adjacent facilities under the control of an owner.

Sec. 05.18.470. Gambling equipment and supplies; purchase or lease.
Gambling equipment and supplies used in conducting gambling operations may be purchased or leased only from licensed suppliers.

Sec. 05.18.480. Permitted forms of wagering.
Only gambling games permitted under this chapter are allowed.

Sec. 05.18.490. Presence required for wagering.
Wagers may be received only from a person present in the facility. A person may not make a wager on behalf of another person who is not present in the facility.

Sec. 05.18.500. Wagering prohibited with negotiable currency.
Wagering may not be conducted with money or other negotiable currency.

Sec. 05.18.510. Persons under 21 years of age; presence in gambling area.
(a) A person under 21 years of age may not be present in the area where gambling is conducted except as provided in (b) of this section.
(b) A person who is at least 18 years old and is employed by the gambling facility may be present in an area where gambling is conducted. However, a person under

21 years of age may not perform a function involving gambling or the sale and distribution of alcohol.

Sec. 05.18.520. Persons under 21 years of age; wagering prohibited.
A person under 21 years of age may not make a wager.

Sec. O5.18.530. Tokens, chips, or electronic cards; purchase.
(a) All tokens, chips or electronic cards used to make wagers must be purchased while in the gambling facility or at facility adjacent to the gambling facility that is approved by the commission.
(b) Tokens, chips or electronic cards may be purchased under an agreement under which the owner extends credit to the patron.

Sec. 05.18.540. Crimes.
(a) Class A misdemeanors.
(b) Class C felonies.

Sec. 05.18.550. Possession of cheating devices; presumption.
Possession of more than one of the devices described in AS 05.18.340(b) as cheating devices creates a rebuttable presumption that the possessor intended to use the devices for cheating.

Sec. 05.18.560. Convicted felons; entering gambling facilities prohibited.
Person convicted of a felony described in AS 05.18.540(b) is barred for life from any gambling facility within the state.

Sec. 05.18.570. State gaming fund.
State gaming fund created in the general fund, consisting of all revenue received from gambling activities created under this chapter and other money credited or transferred to the fund from another source.

Sec. 05.18.580. Adjusted gross receipts tax; rate; payment.
(a) Seventeen percent tax imposed on the adjusted gross receipts received from gambling games.
(b) Tax to be remitted to the department before the close of the business day following the day the wagers are made.
(c) Department may require payment to be made by electronic funds transfer.
(d) If an electronic funds transfer is required, the department may allow the owner to file a monthly report to reconcile the amounts remitted to the department.
(e) Municipality in which a gambling facility is located may not impose a tax of more than three percent on adjusted gross receipts.

Sec. 05.18.900. Definitions.
Definitions of terms used in this chapter.

Section 6: Amends AS 11.66.280(2). Definitions. Adds Alaska Gaming Commission and AS 05.18 to the definition of what is to be excluded from the definition of the crime of gambling.

Section 7: Adds a new subsection to AS 18.65.080. Powers and duties of department and members of state troopers. Authorizes the Department of Public Safety to investigate and ascertain whether a commissioner has been convicted of a crime set out in AS 05.18.010(g).

Section 8: Amends AS 39.50.110(11). Exempt service. Adds the Alaska Gaming Commission to those in exempt service.

Section 9: Adds a new paragraph to AS 39.50.200(b). Definitions. Adds Alaska Gaming Commission to state commissions or boards.

Section 10: Repeals AS 05.15.690(9). Definitions. Deletes "department means the Department of Revenue;"

Section 11: Adds a new section to uncodified law. Instructs the revisor of statutes to change references to the commissioner and department in AS 05.15 to commission unless it is clear from the context that commissioner refers to a commissioner other that commissioner of revenue and department refers to a department other than the Department of Revenue.

'OUSE COMMITTEE REPOI

(11)
Date Referred to Committee: April 6, 2004 — FURTHER REFERRALS:

Date of Committee Action: 4·21·04

The FINANCE Committee considered: — HB 552

HOUSE BILL NO. 552 — GAMBLING

"An Act relating to gambling and gaming."

Recommends it be replaced with [ ] HCS *or* [X] CS for HB 552 (FIN)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [X] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW			✓	
REV			✓	
DPS			✓	
DPS			✓	

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Ken Meyer	Meyer			X	
[illegible]	Hawken			✓	
[illegible]	[illegible]		✓		
[illegible]	[illegible]			✓	
Carol E. Moser	MOSES			✓	
[illegible]	Chenault				X
[illegible]	Fate	✓			
[illegible]	[illegible]			✓	
Chair: [illegible] HARRIS	Harris			X	
Chair: [illegible] Williams	Williams	X			

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number
Bill Version HB 552
( ) Publish Date

Revision Date/Time (Note if correction)
Dept. Affected Revenue
Title Gambling
RDU Revenue Programs & Services
Component Tax Division
Sponsor House Finance Committee
Requester House Finance Committee
Component No 2476

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL EXPENDITURES	-	-	-	-	-	-
CHANGE IN REVENUES ( )	-	-	-	-	-	-

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	-	-	-	-	-	-

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	-	-	-	-	-	-
Part-time						
Temporary						

ANALYSIS: *(please see attached for more analysis)*

* We have not included projections because of the lack of information on the size of the casino, choice of the mix of games and location for the proposed Casino. Although the city location is known because the only city in the state "with at least 150,000 in population" is Anchorage, the exact location of the facility is unknown. There has been some speculation about the former Alaska Seafood International plant (Juneau Empire - April [illegible] 2004) but the bill does not include any specific reference to a particular site.

The American Gaming Association lists eleven states with commercial casinos, six states with racetrack casinos and 23 states with American Indian casinos. The number of casinos in each state varies between 3 in Michigan to 249 casinos with gross revenues (after-prize income) of at least $1 million in Nevada. Gross revenue for commercial casinos varies between $65 million in South Dakota (38 casinos) and $9.4 billion in Nevada.

(continued)

Prepared by Larry Meyers and Brett Fried
Phone [illegible]
Division Tax Division
Date/Time 4/19/2004 7:31 AM
Approved by Steve Porter, Deputy Commissioner
Date 4/19/2004
Agency Department of Revenue

ANALYSIS CONTINUATION

Finding a state or casino that is a proxy for Alaska is complicated by differences in state and local statutes and regulations, choice of gaming mix, population densities, availability of substitutes, income levels and many other factors. However, below we provide some very rough estimates of expenditures and revenues.

Expenditures

We based our operating costs on a similar organization of auditor and investigator staff as found in South Dakota. South Dakota casino revenue closely approximates what we are estimating for Alaska. Most other states have much higher casino related expenses and would not be appropriate as a model for Alaska. It is expected that the Alaska Gaming Commission would consist of three (3) gaming commissioners, nine (9) new positions and seven (7) charitable gaming positions transferred from the Department of Revenue. It is difficult to project the operating costs under this legislation as some costs will be funded or reimbursed by fees set by the Commission.

Overall funding request of $1.7 million in FY 05 and $1.5 million in the following fiscal year includes $548,000 General Fund Program Receipts currently in the Governor's FY05 budget request for charitable gaming. Because the Commission has the power to set fees and investigations are reimbursed , it is possible that most of the costs would be paid by the Casino.

Personal service costs include the Executive Director, seven audit staff, four investigators, an analyst programmer and three technical and administrative staff. Travel costs include travel to hearings, Commissioner per diem, and audit and investigator staff travel. Contractual costs include professional services for background investigations, and associated staff costs for communications, leased vehicle, advertising, printing, training and professional memberships. Supply costs include office, data needs and desk peripherals for each year. Equipment costs are a one-time projection for FY05 or first year of operation for necessary office setup and equipment.

Revenues

There are two variables that normally enter into the estimation of potential revenues from casinos. The first is the size of the facility or the number of gaming devices and tables and the second is the distance from potential gamers. Cummings Associates (2004) found that these are the two most important determinants in predicting gaming facility revenues. The Bear Stearns 2002 North American Gaming Almanac includes participation rates (number of visits per adult population) for ten states and 34 communities. Statewide rates vary from 3.2 in Oregon to 6.2 in New Mexico. The problem with statewide participation rates is that they reference multiple casinos. Bear Stearns shows 6 tribal casinos in Oregon and 12 tribal casinos and 4 racinos in New Mexico. Clearly, multiple casinos will have an effect on the participation rate in a State. Consequently, we used the following two criteria in our choice of communities: (1) the market potential adult population within 100 miles (as determined by Bear and Stearns) had to be less than 500,000 and (2) the market had to be served by only one casino.

Bear and Stearns

We used the "2002-2003" North American Gaming Almanac produced by Bear and Stearns to find casinos that met the criteria discussed above. We found five casinos that fit the criteria and then we used the median and high participation rate and median and high revenue per visit to estimate potential revenues from a casino in Anchorage. After including tourists and Alaskans on and off the road system we developed a range from $5.6 to $10.4 million a year after the casino is fully operational.

Substitution

The after-prize income from Anchorage pull-tabs is approximately $13 million with $5.6 million going to charities. We do not know how much charitable gaming revenues will decline as a result of a casino in Anchorage.

Visitors

Given that we have over 1.5 million visitors to our state annually, the number of casino visits from tourists [illegible] However, it is necessary to consider that approximately 350,000 of these visitors arrive or depart by cruise ship and already have full casino facilities available on board. In addition, approximately 60 percent of cruise ship passengers just cruise [illegible] passage and never go to Anchorage. Alaska tourism is a highly seasonal with about 84 percent of the visitors [illegible] the Summer months. It seems unlikely that tourists whose primary purpose of traveling is to game would not choose [illegible] highly developed gaming areas where the casinos include [illegible] resort amenities. The tourist participation rate [illegible] Washington (17 casinos) and Oregon (8 casinos). These casinos are often located on very busy highways and are not accessible by air so tourism participation in Alaska could easily be lower.

ANALYSIS CONTINUATION

Income

One of the shortcomings of the above analysis is that all of the small casinos used as proxies for the Anchorage casino are in areas where incomes are relatively low. Per-capita income in Alaska is approximately 44 percent higher than in Mississippi, 14 percent higher than in Iowa and 11 percent higher than in Missouri. In a 2004 report by Cummings Associates Cummings refines his model by using "less critical" parameters such as per capita income, urban/rural mix and relative reach of other casinos. On per capita income he argues that "higher is not necessarily better, but lower-income areas appear to spend less." All of these "less critical parameters" would argue for a revenue estimate at the higher end of the suggested range.

Bear and Stearns Representative Casinos								
City	Pop. Market[1] 0-100 Miles	Participation Rate[2]	Gamer Visits	Gaming Revenue	Revenue Per Visit	Casino Sq. Ft.	Slots	Tables
Caruthersville, Missouri[3]	234,197	2.8	655,752	$26,200,000	$40	20,000	753	15
Fort Madison, Iowa[4]	191,526	3.6	679,967	$33,300,000	$49	14,021	532	26
Natchez, Mississippi[5]	217,712	3.7	804,231	$41,600,000	$52	15,783	702	19
Boonville, Missouri[6]	458,692	3.9	1,780,592	$89,000,000	$50	28,000	900	27
La Grange, Missouri[7]	151,913	4.1	622,843	$34,000,000	$55	10,000	450	15

* Note - Communities with only one casino and a market population area less than 500,000

Anchorage Estimates using High and Median Revenue per Visit and Participation Rate									
	Population (21+ Alaska)	Participation Rate		Visits		Rev. Per Visit		Revenue	
		Median	High	Median	High	Median	High	Median	High
Anchorage[8]	253,132	3.7	4.1	936,588	1,037,841	$50	$55	$46,829,420	$57,081,266
Out of Market Fairbanks[9]	57,055	0.6	0.6	34,233	34,233	$50	$55	$1,711,637	$1,882,801
Out of Market Alaska[10]	114,017	0.1	0.1	11,462	11,462	$50	$55	$573,086	$630,395
Total Tourists[11]	1,562,700	0.02	0.02	31,254	31,254	$50	$55	$1,562,700	$1,718,970
Totals				1,013,537	1,114,790			50,676,844	$61,313,432
State Tax @ 17 percent								8,615,063	10,423,283

Source: Ader, N Jason. Bear Stearns 2002-2003 North American Gaming Almanac. Huntington Press - Las Vegas, Nevada.

[1] The population is an estimate by Bear and Stearns for 2006 of the market for a particular casino within a 100 mile radius. Casinos were only chosen if there was only one casino in the market area and the market potential within 100 miles was less than 500,000 adults

[2] Participation rate is the estimate of the number of visits per person

[3] The Caruthersville market has of one riverboat property, Casino Aztar. The adult population within 100 miles is almost 1.8 million but the market potential adult population estimate for 2006 is 234,197

[4] The Fort Madison market has a single casino called Catfish Bend. Although the adult population within a 100 mile radius is over a million, the market potential adult population estimate for 2006 is 191,526

[5] The Natchez market has a single Isle of Capri casino. The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 217,712. The participation rate is a weighted average for each 50 mile increment

[6] The Boonville market has one Isle of Capri riverboat property. The adult population within a 100 mile radius is about 1.5 million but the market potential adult population estimate for 2006 is 458,692. The participation rate is a weighted average for each 50 mile increment

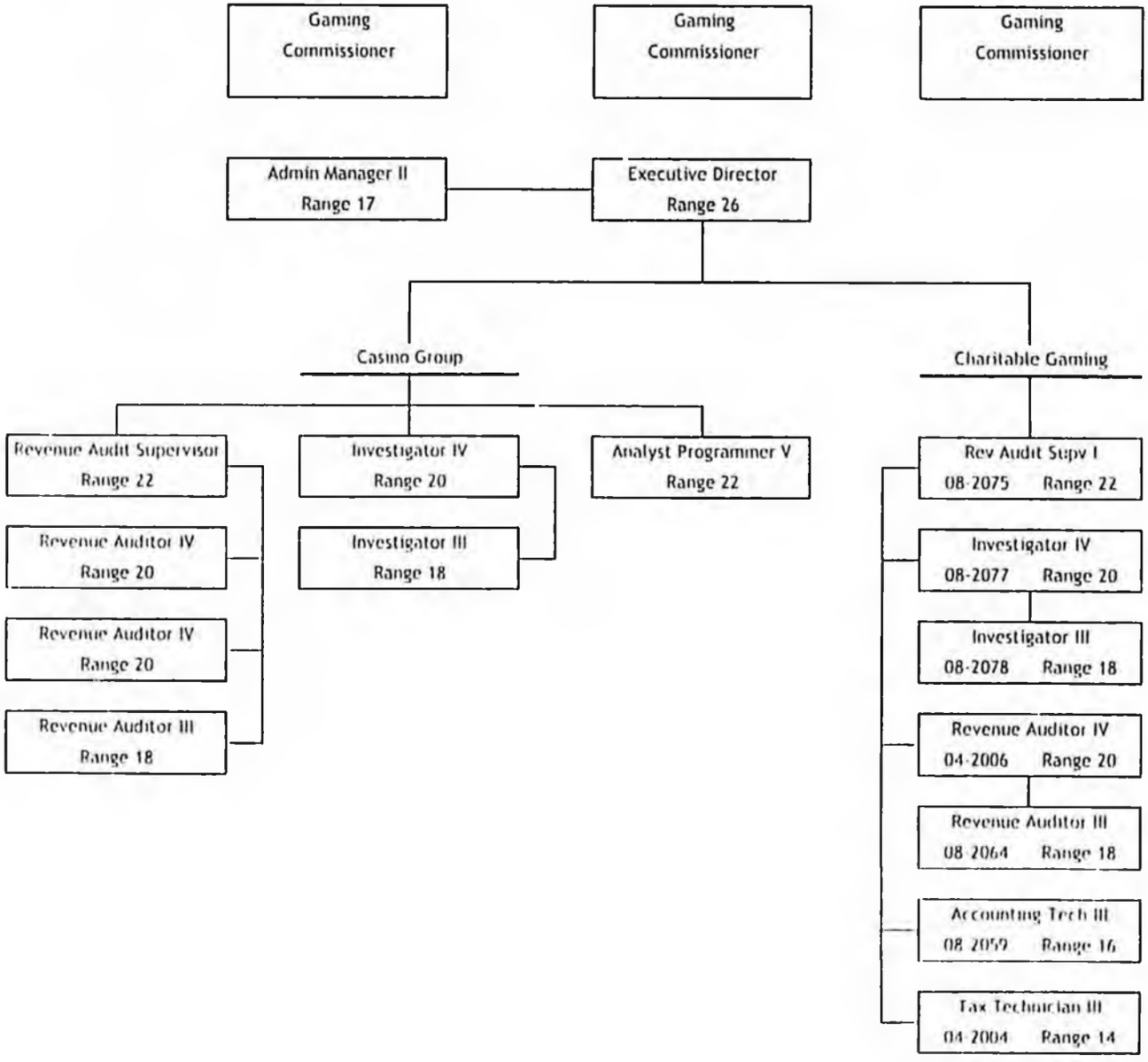
[7] The La Grange market has the Mark Twain Riverboat Casino. The adult population within a 100 mile radius is about 1.0 million but the market potential adult population estimate for 2006 is 151,913. The participation rate is a weighted average for each 50 mile increment

[8] Because the only legal competition for the casinos with a 100 mile radius of Anchorage are Bingo halls and pull tabs, it is assumed that the market population is equivalent to the adult population of Anchorage, Mat Su and the Kenai Peninsula Borough

[9] The adult population of Fairbanks and Denali are included at a higher participation level than others outside of the 100 mile radius because of road access

[10] The remaining adult Alaska population is shown at the level of access in Detroit outside of the 100 mile but within 150 miles. This is probably generous given the lack of road access and only one not three large casinos

[11] Total visitors to Alaska is from Northern Economics visitor statistics for Summer 2003 and Fall/Winter 2002-2003 statistics. Participation rate is for Washington and Oregon tourist participation where there are eight and seventeen casinos, respectively


Gaming Commissioner
Gaming Commissioner
Gaming Commissioner
Admin Manager II Range 17
Executive Director Range 26
Casino Group
Charitable Gaming
Revenue Audit Supervisor Range 22
Revenue Auditor IV Range 20
Revenue Auditor IV Range 20
Revenue Auditor III Range 18
Investigator IV Range 20
Investigator III Range 18
Analyst Programmer V Range 22
Rev Audit Supv I 08-2075 Range 22
Investigator IV 08-2077 Range 20
Investigator III 08-2078 Range 18
Revenue Auditor IV 04-2006 Range 20
Revenue Auditor III 08-2064 Range 18
Accounting Tech III 08-2059 Range 16
Tax Technician III 04-2004 Range 14

HB 552 Expenditures	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10
PERSONAL SERVICES						
Executive Director	106.0	106.0	106.0	106.0	106.0	106.0
Administrative Manager II	65.7	65.7	65.7	65.7	65.7	65.7
Casino Group						
Revenue Audit Supervisor I	92.0	92.0	92.0	92.0	92.0	92.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor IV	81.0	81.0	81.0	81.0	81.0	81.0
Revenue Auditor III	70.1	70.1	70.1	70.1	70.1	70.1
Investigator IV	81.0	81.0	81.0	81.0	81.0	81.0
Investigator III	70.1	70.1	70.1	70.1	70.1	70.1
Analyst Programmer V	92.0	92.0	92.0	92.0	92.0	92.0
Charitable Gaming						
Revenue Audit Supervisor I	99.9	99.9	99.9	99.9	99.9	99.9
Investigator IV	92.2	92.2	92.2	92.2	92.2	92.2
Investigator III	72.9	72.9	72.9	72.9	72.9	72.9
Revenue Auditor IV	84.2	84.2	84.2	84.2	84.2	84.2
Revenue Auditor III	84.8	84.8	84.8	84.8	84.8	84.8
Accounting Technician III	59.3	59.3	59.3	59.3	59.3	59.3
Tax Technician III	52.6	52.6	52.6	52.6	52.6	52.6
	1,284.8	1,284.8	1,284.8	1,284.8	1,284.8	1,284.8
TRAVEL						
Staff Travel	41.4	41.4	41.4	41.4	41.4	41.4
Commissioner Meetings/Hearings [A]	31.2	31.2	31.2	31.2	31.2	31.2
	72.6	72.6	72.6	72.6	72.6	72.6
CONTRACTUAL						
Professional Services	184.0	92.0	92.0	92.0	92.0	92.0
Communications (Phones, Postage, Data)	5.4	5.4	5.4	5.4	5.4	5.4
Leased Vehicle Costs	5.8	5.8	5.8	5.8	5.8	5.8
Advertising, Printing	3.0	3.0	3.0	3.0	3.0	3.0
Equipment Maintenance	3.0	3.0	3.0	3.0	3.0	3.0
Training Costs	5.0	3.0	3.0	3.0	3.0	3.0
Memberships, Conference Costs	2.0	2.0	2.0	2.0	2.0	2.0
	208.2	114.2	114.2	114.2	114.2	114.2
SUPPLIES						
Office and Data Supplies	40.0	40.0	40.0	40.0	40.0	40.0
	40.0	40.0	40.0	40.0	40.0	40.0
EQUIPMENT						
9 Positions - Offices, Equipment [B]	72.0	0.0	0.0	0.0	0.0	0.0
	72.0	0.0	0.0	0.0	0.0	0.0
FY TOTALS	1,677.6	1,511.6	1,511.6	1,511.6	1,511.6	1,511.6

[A] 31.2 = 3 Commish * $200 @ 52 mtgs/hrgs

[B] Base estimate @ $8.0/Position

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB552-LAW-CDCO-4-19
Bill Version: HB 552
( ) Publish Date:

Revision Date/Time (Note if correction):
Dept Affected: LAW
Title: "An Act related to gambling and gaming."
RDU: CRIMINAL & CIVIL
Component: Criminal Justice Litigation
Commercial and Fair Business
Sponsor: House Finance Committee
Requester: House Finance Committee
Component No.: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	.....	.....	.....	.....	.....	.....
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	.....	.....	.....	.....	.....	.....
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	.....	.....	.....	.....	.....	.....

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill creates the Alaska Gaming Commission to oversee and license legal gambling in Alaska. The bill creates several new crimes involving participants in the gambling operation and the players themselves. The number and type of these crimes may depend on how well-run and how well-regulated the casino turns out to be in actual operation. However, the lure of easy money and new forms of gambling technology make it difficult to predict the effect of such cases on the Criminal Division of the Department of Law until more experience is gained.

There is evidence that casinos may increase the level of crime in the surrounding area; the extent of the increase cannot be known at the present time. Additionally, some level of indeterminate additional legal services will be needed to assist the Commission in its function.

Prepared by: Kathryn A. Daughhetee, Director
Phone: 465-2873
Division: Administrative Services
Date/Time: 4/19/04 4:14 PM
Approved by: Kathryn Daughhetee for Gregg D. Renkes, Attorney General
Date: 4/19/2004
Agency: Department of Law

(Revised 12/2003 OMB)

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB552CS-DPS-CRI-4-22-04
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: DPS
Title: Gambling & Gaming
RDU: Statewide Support
Component: Criminal Records & ID
Sponsor: H. Finance
Requester: H. Finance
Component No.: 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	*	*	*	*	*	*

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health						
Other (Specify Type–Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time	*	*	*	*	*	*
Temporary	*	*	*	*	*	*

ANALYSIS: *(Attach a separate page if necessary)*

The bill requires criminal record checks for gambling licensure. The gambling commission within the Department of Revenue will collect fees from license applicants to pay DPS for the record checks.

The department charges $59 for each fingerprint-based check of state and national criminal records. The fee includes $35 for a check of state criminal records plus $24 (set by the FBI) to check national criminal records. The department retains $2 of the FBI's fee for handling. The department will seek an increase in authority to receive funds from the gambling commission to accommodate the increase in workload when the volume of criminal record checks can be determined.

Prepared by: Diane Schenker, Criminal Justice Planner
Phone: 907-269-5092
Division: Statewide Services
Date/Time: 4/22/04 9:23 AM
Approved by: Commissioner William Tandeske
Date: 4/22/2004
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB552CS-DPS-ABI-4-22-04
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: Act related to gambling and gaming
RDU: Alaska State Troopers
Component: Alaska Bureau of Investigation
Sponsor: (H) Finance
Requester: (H) Finance
Component No.: 2744

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type–Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost:
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

At this point in time, in order to determine the fiscal impact to the Department of Public Safety (DPS) if HB 552 were to become law, consideration is only being given to the tasks of criminal history checks and background investigations. Because there are different levels or types of background investigations and criminal history checks that can be conducted, consideration must be given to the type and to what degree each applicant, owner, employee, and Alaska Gaming Commission member and staff member will be investigated.

Alaska Gaming Commission:

As the Alaska Gaming Commission members are selected by the Governor, each member will undergo a background investigation to include a fingerprint based criminal history check, a credit check, and other actions as deemed appropriate.

Prepared by: Lt. Al Storey
Phone 269-4532
Division: Alaska State Troopers
Date/Time 4/22/04 9:00 AM
Approved by: Commissioner William Tandeske
Date 4/22/2004
Agency: Department of Public Safety

ANALYSIS CONTINUATION

At a minimum, this will take an estimated 8 to 12 staff-hours each to accomplish assuming that no issues are discovered that need additional investigation.

As the Alaska Gaming Commission comes into being, it will need an executive director, auditors, investigators, and administrative support. Those state employees will also require a fingerprint based criminal history check, a credit check, and other investigative efforts to insure that no issues are left unanswered as to the credibility of the employees. It is estimated that such investigations will take 6 to 8 staff-hours each to accomplish.

Also, based on the organizational chart proposed by the Department of Revenue in their fiscal analysis, seven state employees that will be assigned within the casino group, which is in turn subordinate to the executive director of the commission. All totaled, not counting the three gaming commissioners themselves, 9 state employees will need background investigations due to their employment with the Alaska Gaming Commission.

Owners, Managers, and Key Employees:

Based on input from other states, it is believed that at a minimum, all owners or partners of a gambling facility, all managers, and select key employees should have an expanded background investigation to include a fingerprint based criminal history check, a credit check, interaction with other state and local law enforcement agencies, and other appropriate investigative efforts as necessary to insure that the individuals are legitimate members of the business community.

Background checks will take a minimum of 8 to 12 staff-hours to accomplish. If information of a negative nature is discovered, additional investigative effort will be needed to insure that all concerns are properly addressed. It is not clear at this point how many of these types of background checks will be required. The number of these types of inquiries can also vary depending on the regulations that will be promulgated if this bill becomes law.

Occupational Licensing and Other Employees:

As provided for in the proposed legislation, others associated with the operation of the gambling facility will require occupational licensing. Based on the regulations that will be promulgated as a result of this legislation, it is believed that as part of the occupational licensing process, fingerprint based criminal history checks will be required in order to obtain an occupational license. The majority of these types of employees will be able to have their fingerprint based criminal history checks accomplished through a process that already exists as described in the fiscal analysis prepared by the Statewide Services Division of the Department of Public Safety. There are other considerations that must be looked at when making a finding of suitability as it relates to those involved in the sale, transfer, or offering for use or play of gambling associated equipment. Those considerations include, but certainly are not limited to, a credit check of individuals involved in the enterprise as well as past business practices.

Summary:

While HB 552 provides for the commission to reimburse the DPS for costs incurred in conducting background investigations from fees collected from applicants for licenses, the total number of people that will be required to obtain a complete background investigation and the amount of time and effort needed to complete each investigation are not immediately known. Therefore, the fiscal impact to the DPS cannot be determined at this time.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 21, 2004

SUBJECT: CSHB 552(FIN), Indian Gaming, and Indian Gaming Regulatory Act (Work Order No. 23-LS1802\I)

TO: Representative Bill Williams
Attn: Pete Ecklund

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked various questions about Indian gaming, the Indian Gaming Regulatory Act, and the effect of this bill on Indian gaming in Alaska. Due to the time constraints of the request and of other work, I have been unable to engage in the extensive research I would normally provide for a request like this.

The federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., provides Indian tribes the authority to conduct gaming and gambling on Indian lands. The Indian Gaming Regulatory Act divides gaming into three classes:

> (1) Class I gaming includes social gaming for minimal prizes and traditional Indian gaming conducted at ceremonies or celebrations;
> (2) Class II gaming includes bingo, lotto, pull-tabs, punch boards, tip jars and non banking card games, as well as banking card games operated on or before May 1, 1988;[1] and
> (3) Class III gaming includes casino-type gambling, pari-mutual horse and dog racing, lotteries, and all other forms of gaming that are not class I or II gaming.

Class I gaming on Indian lands is within the exclusive jurisdiction of the tribes and is excluded from the provisions of the IGRA. Class II gaming on Indian lands is within the jurisdiction of the tribes but is subject to the provisions of the IGRA, including oversight

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[1] Class II gaming does not include:

> (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
> (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

25 U.S.C. § 2703(b).

by the National Indian Gaming Commission. For example, an Indian tribe seeking to conduct bingo games could choose to do so under the authority of state law or could do so separately under a permit from the National Indian Gaming Commission. Class III gaming activities are lawful on Indian lands only if authorized by a tribal ordinance or resolution, the activities are conducted on lands located in a state that permits such gaming for any purpose by any person, organization, or entity, and the activities are conducted in conformance with a tribal-state compact entered into by the tribe and state.

The Act provides a framework for negotiation of a tribal-state compact -- the tribe requests the state to enter into negotiations; upon receiving such a request, the state "shall" negotiate with the tribe in "good faith" to enter into such a compact. We all know now that this "shall" is limited by the Eleventh Amendment immunity of the states as discussed in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996)[2]

Who negotiates compacts?

In *State ex rel. Stephan v. Finney*, 251 Kan. 559, 836 P.2d 1169 (1992), the Kansas Supreme Court was confronted with this question. In that case the Attorney General of Kansas sued the Kansas Governor challenging the authority of the governor to negotiate and enter into a binding tribal-state compact under IGRA. The court in deciding whether the governor had such power looked to the Kansas Constitution (the governor has the power to execute the laws - the legislature the power to make the laws), statutes (there

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[2] IGRA provided that a state that refused to negotiate in good faith could be hauled into federal court where a mediator would choose a compact between those proposed by the tribe and the state. The *Seminole* court found this procedure unconstitutional. The implications of this decision are unclear and I see it as a double-edged sword. While a state may not be forced into court without its assent the remedy in the IGRA provided to a tribe when a state refuses to negotiate in good faith has now been excised from the act. At least five states have asserted an 11th Amendment immunity from IGRA suits, Alabama, Florida, Kansas, Nebraska, and Washington. Are tribes without any remedy at all? The 11th Circuit in deciding *Seminole* didn't think so. The court said that if the state claims 11th Amendment immunity then the tribe is to notify the Secretary of Interior who will then prescribe regulations governing class III gaming on the tribe's lands within the state. *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016, 1029 (11th Cir. 1994). This remedy may be worse for the state than the IGRA provision of being summoned to court. The state may have no say in the tribal class III gaming within the state. The Supreme Court in *Seminole* specifically refused to disavow this substitute remedy. Congress for many years passed a rider to prevent the Secretary of the Interior from adopting such regulations. The Department of the Interior finally passed such regulations and at least two states, Florida and Alabama, have filed suit to contest those regulations. Another remedy for the tribes is even worse for the state. In that situation the tribe just decides to engage in class III gaming without any authorization from anyone and without a compact. At least one federal court has refused to allow federal enforcement actions against a tribe engaging in illegal class III gaming because of the *Seminole* decision. *U.S. v. Spokane Tribe of Indians*, 139 F.3d 1297 (9th Cir. 1998).

was no clear grant of authority for the governor to enter into negotiations and bind the state thereby), and the compact itself. The compact was important in that case because it greatly expanded state agency operations beyond those authorized by the legislature, including the hiring of staff and the creation basically of a new state office. These actions, the court concluded, operated as the enactment of new laws and the amendment of existing laws as such legislative approval or authorization for the actions were necessary. Therefore,

> [o]n the narrow issue presented, we concluded the Governor had the authority to enter into negotiations with the Kickapoo Nation, but, in the absence of an appropriate delegation of power by the Kansas Legislature or legislative approval of the compact, the Governor has no power to bind the state to the terms thereof.

State ex rel. Stephan, *supra*, at 1185.

The analysis used by the Kansas Supreme Court appears equally valid in Alaska. In Alaska the executive power of the state is vested in the governor. Article III, § 1 of the Alaska Constitution. The governor is "responsible for the faithful execution of the laws." Article III, § 16. Meanwhile, the legislative power of the state is vested in the legislature. Article II, § 1. My review of the statutes has not revealed any grant of authority by the legislature to the governor so as to enable the governor to enter into binding negotiations with an Indian tribe for a state-tribal compact under IGRA.

The experience in New Mexico is also significant. In New Mexico the governor concluded compacts with a number of tribes some of whom were already illegally operating class III gaming in the state. Members of the legislature sued, arguing that the governor's execution of the compacts violated the state constitution by usurping the power of the legislature. The New Mexico Supreme Court agreed finding the governor's actions to have been the creation of law, a legislative power, rather than the mere execution of the law as delegated to the executive branch. *New Mexico ex rel. Clark v. Johnson*, 904 P.2d 11 (N.M. 1995). The tribes and the federal government later argued in federal court that the tribes and the federal government had the right to rely on the now discredited compacts and that federal approval of the compacts allowed the tribes to continue to game as permitted in the compacts. The 10th Circuit rejected this argument finding that the question of who has a right to enter into compacts on behalf of the state is a question for the state courts and the New Mexico court decision finding the compacts invalid meant that the tribes and federal government could not rely upon them. *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546 (10th Cir. 1997).[3]

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[3] The New Mexico situation is also significant as the legislature finally authorized the governor to enter into compacts with the tribes under certain terms as prescribed by the legislature including a requirement that the tribes share a portion of their gaming revenues with the state. At least some of the tribes are now refusing to pay the state as required under the compact arguing that revenue sharing is illegal under the IGRA. This issue is currently being litigated in federal court in New Mexico.

Even though there are no state laws that clearly provide that the governor may negotiate with a tribe under IGRA, I conclude that it seems reasonable for the governor to inherently have the authority as the executive authority for the state to represent the state in its interaction with the tribe under the federal law. The governor, though, may not bind the state to a compact he has negotiated, without the legislature's approval of that compact or the legislature's grant of authority to the governor to so bind the state.[4]

What types of games?

Also important are the types of class III games that are allowed in a state. Some courts have held that if a state allows any type of class III game they must negotiate with the tribes on all class III games. Closely connected with this view is the issue of how the games are permitted. The most famous example of this view arose in federal court in Connecticut. Connecticut allowed charities to conduct fund-raising "Monte Carlo" or "Las Vegas" nights, once each year, at which charities were allowed to use dice, cards, and numbers wheels for games that participants purchased scrip and used that scrip to bet on the games and then could exchange the scrip for prizes during the evening. In other circumstances the use of dice, cards, and numbers wheels was illegal in Connecticut. The federal courts held that allowing the use of dice, cards, and wheels required Connecticut to negotiate with the tribes with regard to those games and all other class III games without restriction.[5] See *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, at 1031 - 1032 (2nd Cir. 1990); *Mashantucket Pequot Tribe v. Connecticut*, 737 F.Supp. 169, at 173 - 176 (D. Conn. 1990). Thus, the largest casino in the world was born in Connecticut. In response to this decision the Idaho legislature repealed similar "Las Vegas" night authority and the Alaska Legislature did the same several years ago. See ch. 105, SLA 1995.

The 9th Circuit has adopted a somewhat different view. In *Rumsey Indian Rancheria v. Wilson*, 62 F.3d 1250 (9th Cir. 1994), the court held that the state need only negotiate with a tribe over those games that the state permits to operate within its borders and "need not give tribes what others cannot have." *Id.*, at 1258. Thus, even though Alaska allows charities to operate lotteries (any of the myriad forms of ice, rain, mercury and other classics authorized under AS 05.15 are probably lotteries) this should not require the state to negotiate with the tribes over other types of class III games. If Alaska still allowed charities to conduct casino nights the state would certainly be obliged to negotiate and permit those games if the state did not avail itself of the Seminole decision.

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[4] I have some questions about whether the legislature can delegate to the governor the authority to enter into a compact that actually changes or alters the laws of the state, as such could be construed as an unconstitutional delegation of the legislature's law making power.

[5] Connecticut contended that they only had to negotiate with the tribes to allow those games to be played with the use of scrip. The federal courts disagreed.

See, e.g., *Coeur d'Alene Tribe v. Idaho*, 842 F.Supp. 1268 (D. Idaho 1994), *aff'd.* 51 F.3d 876 (9th Cir. 1995).

CSHB 552(FIN) would allow full scale casino gaming in Alaska, therefore, Alaska tribes would be entitled to negotiate with the state to conduct all of those types of games. The proverbial "door" would be open.

What are Indian lands for purposes of the IGRA?

This is the troublesome part of "opening the door." It is impossible, in my opinion, for anyone to say that gaming will be limited to certain clearly identified portions of land or areas of this state. No one knows exactly how much Indian land there is and where that Indian land is for purposes of Indian gaming in Alaska. It is clear, though, that the *Venetie* decision does not provide the answer or comfort that some have alluded to in this regard.

The IGRA does not confine its reach to lands normally considered as "Indian country" as that term has been defined and applied. The IGRA applies to Indian lands which are defined in the act to be:

> (A) all lands within the limits of any Indian reservations; and
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703. The boundaries of this definition have not been sufficiently explored. Obviously the first part of the definition has limited utility in Alaska as only the Metlakatla Indian Community is a true reservation. There are several parcels of land in Alaska (in or near Klawock, Angoon, and some other places) that are held in trust by the United States for an Indian tribe that seemingly meet the requirements of the second part of the definition. The United States government also holds land in trust for various individual Alaska natives under Native allotment and townsite acts. Such land, even if it is located off reservation and not otherwise contiguous or adjacent to a reservation, has been found in other states to qualify as Indian land and as Indian country.[6] Otherwise it is not clear what fits or does not fit within the second part of the definition.

It is clear, I believe, that the second part of the definition does not require a finding that these lands are Indian country. While some people seem to think that the *Venetie*[7] decision ended discussion as to the potential reach of the IGRA in Alaska, that view

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[6] *See, e.g., Tempest Recovery Services, Inc. v. Belone*, 74 P.3d 67(N.M. 2003). This case is interesting because the New Mexico Supreme Court cites *Venetie* as requiring reversal of prior New Mexico decisions that off reservation allotments were not Indian country.

[7] *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).

ignores the fact that the definition of Indian lands in the IGRA is not dependent upon a finding that the land is Indian country. The only relevance *Venetie* has in the gaming area is that ANSCA land is not Indian country. But it does not mean that ANSCA land may never qualify as Indian land for IGRA purposes or that other land may not qualify as Indian land for IGRA purposes. In any event, I have not seen any definitive attempt in Alaska to determine exactly what lands (and their locations) meet this portion of the definition. To date, the only discussions I have seen have limited themselves to only looking at Indian country locations and have ignored the fact that off reservation allotments could qualify as Indian lands under the second part of the IGRA definition for Indian gaming as has been done in other states.

Further, 25 U.S.C. § 2719 allows for taking of additional lands into trust by the United States and the use of those lands for gaming under the requirements of that section. This provision has been highly controversial as tribes in the 48 contiguous states have sought, in some cases, to move their gaming activities closer to large population centers. Many areas of Indian lands are in remote sites and their utility for gaming is somewhat limited. Not surprisingly there has been pressure placed upon the United Sates to take lands into trust for gaming purposes. While in some cases 25 U.S.C. § 2719 requires the state to be consulted and the governor to approve the proposal, in other situations no such consultation and approval is required.[8] These other situations are especially worrisome as they allow land to be taken into trust and used for gaming purposes without the approval of the governor.

What has also occurred in other states involves tribes asking the federal government to take land into trust for other than gaming purposes. This process, while not necessarily simple, is much easier than asking for the land to be taken into trust for gaming. Once the land is taken into trust the tribe then installs gaming equipment and opens a casino without obtaining the approval that otherwise would have been necessary.[9] Finally, except for Metlakatla Alaska tribes do not have reservation land. The tribes though could seek land to be restored to them for gaming purposes in areas that are within their traditional boundaries. Tribes in other states have been successful in having restored lands[10] qualify for gaming purposes.[11]

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[8] For example, lands can be taken back into trust and used for class III gaming if

> the Indian tribe has no reservation on October 17, 1988, and
>
> . . .
>
> such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

[9] I have enclosed a news story that describes how various Oklahoma tribes have accomplished this.

[10] I am not saying that Alaska tribes would be successful in gaining restored lands but that the possibility exists and it has been done in other states for tribes without reservations or land.

If State authorized class III gaming is limited to certain areas - is Indian gaming similarly limited under IGRA? The answer is clearly no. Just because the state may limit gaming to certain defined and geographically limited areas, or in this case certain population centers, does not limit the authority of tribes to conduct class III gaming on their lands wherever they might be within a state. The Indian Gaming Regulatory Act is clear that if the state allows anyone to conduct class III gaming within the state then the tribes may game on Indian lands within the state.

Subsequent repeal of state laws authorizing class III gaming. It is not clear what happens if a state subsequently repeals the authority of persons to conduct class III gaming after a tribe has commenced gaming in the state. I have not found an instance where the subsequent change of law has resulted in Indian gaming actually stopping.

The Connecticut General Assembly considered legislation the last two years[12] that would repeal charity "Monte Carlo" nights discussed earlier in this memorandum. If "Monte Carlo" nights were repealed, the state of Connecticut would no longer authorize anyone to conduct class III gaming in the state. The effect, as discussed in the press by the proponents of the legislation, would be to prevent additional tribes from starting class III gaming beyond those two tribes that already conduct casino gaming in Connecticut. The rationale being that those that already started casinos did so while class III gaming was allowed in the state, and that authority to conduct casino gaming (subsequently recognized by a compact between the state and the tribe) cannot be revoked. The tribes that would be shut out of gaming under the legislation believe that they will still be permitted to conduct class III gaming because the other tribes will still be conducting class III gaming within the state pursuant to the compact and therefore Connecticut will still be allowing persons to conduct class III gaming within the state.[13]

In 1993, the people of the state of Wisconsin passed a constitutional amendment that specifically identified the types of gaming allowed in the state and prohibited casinos and casino gaming. Indian casinos are still operating in Wisconsin as the governor has continued to renew compacts with the tribes conducting class III gaming. There is at least one lawsuit pending that challenges the authority of the tribes to continue to operate casinos and the governor's authority to continue to renew compacts with those tribes.

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Enclosure

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[11] See, e.g., the attached National Indian Gaming Commission memorandum.

[12] See HB 7501, 2003 Regular Session, Connecticut General Assembly.

[13] In a research report the Office of Legislative Research of the Connecticut General Assembly reached a similar conclusion. See research report 2000-R-699.

Indianz.Com. In Print.
URL http://www.indianz.com/News/show.asp?ID=2003/04/23/chickasaw

Okla. tribe leaps over Indian gaming hurdles

WEDNESDAY, APRIL 23, 2003

The Chickasaw Nation of Oklahoma has expanded its multi-million dollar gaming empire by exploiting loopholes in federal law, according to a review of government documents and interviews.

By skirting rules on the controversial land-into-trust process, the tribe is able to avoid lengthy reviews by Washington, D.C., bureaucrats. Approval instead occurs at the local level with little or no public comment -- and no consultation with affected tribal and state governments. In at least one case, the sign-off took just one day and the land was pulled from county tax rolls.

More importantly, the tribe is able to thwart prohibitions on gaming that occurs on land taken into trust after 1988. The Indian Gaming Regulatory Act (IGRA), passed that year, generally frowns upon such expansions and sets up hurdles that few tribes elsewhere are able to meet.

Free of the restraints, the tribe has emerged as a major player in the $12 billion and growing tribal gaming industry. According to a study by the Oklahoma Indian Gaming Association, the Chickasaw Nation has more casino facilities and casino machines than any other in the state.

From 1988 to 2001, the tribe opened at least 11 casino facilities on newly acquired trust lands. The growth -- unparalleled in Oklahoma tribal circles -- helped bring in more than $1 billion in revenues last year alone.

But the success hasn't come without prying eyes. Last summer, the National Indian Gaming Commission asked tribes in Oklahoma to prove their casinos are operating legally. Richard Schiff, the agency's chief of staff, said the review is ongoing.

Chickasaw Nation Gov. Bill Anoatubby insists the tribe's business practices are within the law. In a June 2002 interview, he described how the process works: the local Bureau of Indian Affairs agency approves the tribe's land-into-trust request and the tribe opens a gas station, tobacco shop or other non-casino enterprise. At some point in the future -- it could be years, said Anoatubby -- gaming machines are added, turning a staid travel plaza into a bustling gaming center.

"We have not tried to go around the rules," Anoatubby said.

Since the tribe doesn't say the land is for gaming purposes, IGRA's tough rules never kick in, allowing the tribe to escape scrutiny that can often take several years to resolve. An examination of government records confirmed that the BIA

simply took the land into trust with little questions asked.

"We rely on the BIA to tell us what we need to do to put the land into trust," Anoatubby noted.

At the time, Anoatubby blamed the doubts about the tribe's casinos on the NIGC, then headed by former commissioner Montie R. Deer, a Clinton appointee. "I wish they would come and talk to us instead of going to the press," he said.

Anoatubby has since failed to respond to requests for comment.

Not everyone thinks the Chickasaw Nation is doing anything out of the ordinary. Kevin Gover, who headed the BIA during the last three years of the Clinton administration, said the bloated land-into-trust process almost forces tribes to take matters into their own hands.

"The tribe can either go to the Department of Interior and ask for a solicitor's opinion and ask for an OK," he said. "or they can go out and start a casino and dare somebody to stop them. It's worked a lot."

The Grand Traverse Band of Ottawa and Chippewa Indians, he recalled, opened a casino on land taken into trust post-1988. DOI officials and solicitors argued that the casino violated IGRA's blanket prohibition. But the tribe, based in Michigan, eventually prevailed in court by clearing one of the law's hurdles.

"It's a risky strategy," Gover said, "but one that works."

Other tribes aren't as lucky even when they go through normal channels. In western Oklahoma, the BIA has strongly enforced the post-1988 ban even when tribes have a credible argument for satisfying what is known as a "Section 20" exemption, named for the section of IGRA outlining the procedure.

In one example, the Fort Sill Apache Tribe has waited more than seven years on a request to open a gaming facility on an Indian-owned allotment. The parcel is held in trust for another tribe and the Apaches are seeking a transfer.

But the matter has bounced back and forth between D.C. and BIA officials in Oklahoma so many times that the tribe has never been given a clear answer.

In another instance, the Cheyenne-Arapaho Tribe asked the BIA to approve a trust land acquisition for gaming purposes. For the Chickasaw Nation in eastern Oklahoma, this can occur in as little as a day, according to government records bearing signatures of Gov. Anoatubby and BIA officials.

But the superintendent of the agency serving the Cheyenne-Arapaho Tribe refused to even consider the request unless tribal officials adopted a resolution stating they would not open a casino on the land.

"They are entitled to prompt and definitive decision," Gover said of the tribes in limbo. "I don't think they got one from us. That's not fair."

Former assistant secretary Neal McCaleb is a member of the Chickasaw Nation. He currently heads up the tribe's business development unit, a position he took when he left the Bush administration earlier this year.

During his tenure, he was recused from all matters affecting the tribe, a standard practice in the Indian-heavy BIA. But while at the agency, he instituted a change in policy that requires all land-into-trust requests for gaming purposes to be approved in Washington, D.C.

Breaking from earlier practice, the Chickasaw Nation has asked for one of these Indian land determinations, said Nedra Darling, a BIA spokesperson. The request has been sent to the Office of Indian Gaming Management, headed by George Skibine, a career bureaucrat, and is still under consideration more than a year after the request was made. Through Darling, Skibine confirmed that none of the other post-1988 Chickasaw facilities went through this rigorous process.

The gaming office, through a memorandum of understanding, works in conjunction with the NIGC to make the Indian land determinations. Clearing IGRA's hurdles, however, is difficult. According to the Senate testimony of former deputy commissioner Sharon Blackwell, the BIA has only approved about 20 exemptions since 1988. None of them were for Chickasaw facilities.

In a recent speech, Aurene Martin, the acting assistant secretary, acknowledged the BIA's role in ensuring that tribal gaming occurs within the law. But she said there are no plans to adopt new regulations for land-into-trust that impose standards on the agency.

"The Department [of Interior] has certain responsibilities under the Indian Gaming Regulatory Act and is responsible for reviewing compacts and placing land into trust which may be intended for gaming purposes," she said on April 10, "We will continue to conduct those activities in a manner that is consistent with federal law."

Relevant Links:
Chickasaw Nation - http://www.chickasaw.net
National Indian Gaming Commission - http://www.nigc.gov

MEMORAMDUM

To: Assistant Secretary – Indian Affairs

From: Associate Solicitor, Division of Indian Affairs

Date: December 5, 2001

Subject: Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F.Supp 2d 155 (D.D.C. 2000) in regard to proposed gaming on the Hatch Tract in Lane County, Oregon.

Introduction

This memorandum is in response to the above referenced decision in Confederated Tribes in which the court remanded this case to the Department for further consideration of the Department's interpretation of 25 U.S.C. § 2719(b)(1)(B)(iii). Section 2719(b)(1)(B)(iii) exempts land taken into trust as part of "the restoration of lands for an Indian tribe that is restored to Federal recognition." This section is part of an overall statutory scheme set forth in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et. seq.* (IGRA), that prohibits gaming on land acquired into trust after October 17, 1988 unless certain exemptions are met.

We have carefully reviewed the Administrative Record in Confederated Tribes, the court's opinion, and additional materials submitted by counsel for the Tribes. In addition, we have taken into consideration the decision issued on August 31, 2001 by the National Indian Gaming Commission (NIGC) to Judge Hillman entitled "Whether the Turtle Creek Casino site that is held in trust by the United States for the benefit of the Grand Traverse Band of Ottawa and Chippewa Indians is exempt from the Indian Gaming Regulatory Act's general prohibition on lands acquired after October 17, 1988." (GTB Decision).

After careful consideration, we conclude that the Hatch Tract falls within the requirements of § 2719(b)(1)(B)(iii), the restored lands exception to the prohibition to gaming on lands acquired after October 17, 1988. It must be noted, however, that this opinion will only address the unique factual and legal circumstances related to the Confederated Tribes.

Background

On October 19, 1999, Solicitor John Leshy issued an opinion regarding whether the "Hatch Tract is exempt from the general prohibition against gaming on land acquired into trust after October 17, 1988, as set forth in the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2702 et. seq. (IGRA)." At issue here are two tracts of land – the Hatch Tract and the Peterman Tract. The Peterman tract is a contiguous

driveway to the Hatch tract. [1] Congress, in 1998, added the Peterman tract to the Tribe's statutory reservation. The Department took the Hatch tract into trust for the tribes in 1998.

In the 1999 opinion, we examined two exceptions to IGRA's requirement for a two-part determination and the Governor's concurrence for off-reservation gaming. The two exceptions we analyzed were the restored lands for restored tribes and the contiguous land exception.[2] We found that the Hatch Tract met neither exception. In the opinion the Solicitor concluded:

We believe that "restored lands" under section 20(b)(1)(B)(iii) include only those lands that are available to a restored tribe as part of its restoration to federal recognition. The statue that restores the Tribe's Federal recognition status must also provided for the restoration of land, and the particular parcel in question must fall within the terms of the land restoration provision. Here, the Confederated Tribes were restored to Federal recognition pursuant to their Restoration Act of 1984 and Congress specifically described the parcels to be acquired. The only lands which constitute :restored: lands for the Confederate Tribes are those parcels in section 7.

October 19, 1999 Memorandum from the Solicitor to the Assistant Secretary – Indian Affairs at 3.

On September 24, 1999, the Tribes filed suit in the U.S. District Court for the District of Columbia challenging the Department's decision to deny certification for the Hatch Tract.[3] The parties thereafter filed cross-motions for summary judgment.

On September 29, 2000, the court ruled in the Department's favor on three of four claims. However, the district court also ruled that the Department had adopted an unduly narrow interpretation of the "restored lands" exception in § 2719(b)(1)(B)(iii) and remanded that single issue for further administrative review. Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F.Supp.2d 155 (D.D.C. 2000).

In pertinent part, the court disagreed that the technical meaning of the term "restoration of lands" included only those lands were available to a restored tribe as part of its legislative restoration to Federal recognition by Congress. Instead, the court found that the plain meaning of "restoration of lands" could be construed as those lands that place a tribe back its position prior to termination. Id. at 163. The court also found that the Department's requirement for specific legislative direction regarding restored lands sought "to graft procedural and temporal limitation onto section 2719(b)(1)(B)(iii)." Id. The court also rejected our argument that giving the statutory language this plain, broad, reading would result in opening the door to permitting gaming on any after-acquired tribal lands. Id. Given the various possible meanings of the section, the court concluded that we had applied "an unduly restrictive analysis" and that we should consider on remand the application of the Indian-favoring canons of construction and the particular factual circumstances surrounding the Hatch Tract. Id. However, the court did agree with Judge Hillman in Grand Traverse Band of Ottawa and Chippewa Indians v. United States Attorney, 46 F. Supp.2d 689 (W.D. Mich. 1999) that "the term 'restoration' may be read in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." Id. at 164, quoting Grand Traverse at 700.

Legal Analysis

Lands that are taken into trust as part of the "restoration of lands for an Indian tribe that is restored to Federal recognition" are exempt from the prohibition against gaming on lands acquired into trust after October 17, 1988. 25 U.S.C. § 2719(b)(1)(B)(iii). This section requires a two-pronged analysis. First, the tribe must be "restored" within the meaning of IGRA. Second, the land to be acquired must be "restored" within the meaning of IGRA.

At issue here is the Department's interpretation of "restored" as applied to land in the context of 25 U.S.C. § 2719(b)(1)(B)(iii). Two district courts have opined that the Department's interpretation of this subsection is too narrow. The court in Confederated Tribes found that the Department failed to apply the canons of construction that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." Id. at 158, citing Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1444-45 (D.C. Cir. 1988) (further internal citations omitted.)

The Department has issued several opinions regarding the application of § 2719(b)(1)(B)(iii) to specific facts.[4] Since that time two courts and the NIGC have issued decisions analyzing the restored lands exception. In addition, none of the Department's previous opinions have included an analysis of the Indian canons of construction. In this opinion, we will re-examine our interpretation of IGRA in light of the foregoing. By applying the Indian canons of construction along with the Department's expertise in interpreting the statute it is charged with implementing, we find that the Hatch Tract constitutes restored lands.

1. The restored lands exception within § 2719(b)(1)(B)(iii) is ambiguous.

Before reaching any of the canons of construction, we must decide whether "the restoration of lands for an Indian tribe that is restored to Federal recognition" is ambiguous. If "Congress has directly spoken to the precise question at issue," then the Department must yield to the plain meaning of the text. Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842 (1984). However, if the provision is ambiguous, then the Department can apply the Indian canons of construction as well as our expertise in interpreting IGRA, to determine the proper application of the restored lands provision.[5]

In Confederated Tribes the court found that § 2719(b)(1)(B)(iii) is ambiguous.[6] The court found that "part of the ambiguity of the provision stems from the use of the phrase: "that is restored to federal recognition." Id. at 162. The court opined that the question boils down to whether the word "restored" in the phrase "Indian tribe that is restored" is intended as a verb (that is, the activity of restoring, in which case the timing should be limited to the congressional action) or as a noun (sic.) (that is, the state of being restored, in which case the timing should extend to completion of the land restoration process whether through later legislative or administrative action). Id. Thus the court found that "the varying possibilities highlight the ambiguity of § 2719(b)(1)(B)(iii)." Id.

The courts in both Confederated Tribes and Grand Traverse Band found that the terms "restore" has no independent legal significance in either IGRA or in other Acts. Confederated at 162-163 and Grand Traverse at 696. Nor does the plain meaning resolve the matter. Merriam-Webster's Collegiate Dictionary at 999 (10th ed. 1999) (the word restored is generally understood as "to bring back to or put back into a former or original state"). The Grand Traverse court held that the language of the "restoration of lands" exception "implies a process rather than a specific transaction, and most assuredly does not limit restoration to a single event." Id. at 701. As explained by the court: "Congressional use of the words appears to have occurred in

a descriptive sense only, in conjunction with action taken by Congress to accomplish a purpose consistent with the ordinary meaning of the words. In no sense has a proprietary use of 'restore' or 'restoration' been shown to have occurred." Id. at 698.

Thus, we believe that § 2719(b)(1)(B)(iii) is ambiguous and has no independent specific legal significance.[7]

2. Indian Canon of Construction

The Indian canons of construction provide that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit ..." Montana v. Blackfeet Tribe of Indians, 471 U.S. 759, 766 (1985). This cannon is rooted in the unique trust relationship between the United States and Indian tribes, and Congress's obligation to act on behalf of these "dependent and sometimes exploited Indian nations." Albuquerque Indian Rights v. Lujan, 930 F.2d 49, 58 (D.C. Cir. 1991) (citing Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942).[8] In the D.C. Circuit, where this case is being litigated, the Court in Coos cited Muscogee (Creek) Nation v. Hodel, 851 F.2d 1439, 1445 (D.C. Cir. 1988) which provides that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." Id. at 1444-45, Coos at 116 F.Supp.2d 155, 157.

3. Department's interpretation of § 2719(b)(1)(B)(iii)

Both the court in Confederated Tribes and Grand Traverse applied the dictionary definition to "restored." Confederated Tribes at 162, Grand Traverse at 696. The dictionary definition of "restore" is: (1) to give back (as something lost or taken away):return . . . 2: to put or bring back (as into existence or use) . . . 3: to bring back or put back into former or original state . . . . Webster's Third New International Dictionary, p. 1936 (G. & C. Merriam Co. 1976).

We believe, however, that to apply dictionary definition to the restored land provision without temporal or geographic limitations would give restored tribes an unintended advantage over tribes who are bound to the limitations in IGRA that prohibit gaming on lands acquired after October 17, 1988. Moreover, we believe that, in examining the overall statutory scheme of IGRA, Congress intended some limitations on gaming on restored lands.

Because there is no legislative history regarding § 2719, one must look elsewhere to glean some indication of the Congress' view regarding off-reservation gaming. IGRA was enacted in the wake of California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) which held that the State of California had no authority under Public Law 280 to enforce its bingo and card game statues on Indian reservations because such laws are regulatory and not prohibitory. For three years prior to that decision, bills had been introduced in Congress aimed at regulating gaming on Indian reservations. None of these bills passed because no agreement could be reached on the kinds of games tribes should be permitted to operate.

Congress did hear testimony as part of the previously failed bills. Rep. Bereuter of Nebraska, who had introduced one of the failed bills, testified that he did not believe that it was "good public policy" to establish Indian gaming operations on lands that were not contiguous to a reservation against the wishes of the directly affected political subdivisions. Indian Gambling Control Act, Part II, Hearings before the House Interior and Insular Affairs Committee, 99th Cong., 1st Sess. 20, 21 (1985) (H.R. 3130 Testimony.) Rep. Bereuter considered it inappropriate for the Secretary to put new lands into trust for gaming because to do so would circumvent State law enforcement and result in lost revenues to State and local governments. Id. Thus, when IGRA was

introduced, it was with a backdrop of political pressure to limit off-reservation gambling without the concurrence of directly affected political subdivisions. It must be noted, however, that as enacted IGRA differed from previous bills.

As one compelling manifestation of the prevailing congressional will, the enacted § 2719 includes a requirement that gaming on most off-reservation, newly acquired lands must be subjected to the two-part determination if § 2719(b)(1)(A), i.e., the Department must find that gaming on newly acquired land is in the best interest of the tribe and its members and not detrimental to the surrounding community, and then the tribe must receive the Governor's concurrence. As with the previous failed bills, Congress intended to give the Department and the local political community a voice in deciding whether to allow gaming. More importantly, it gave the Governor of the State a veto. However, unlike the failed Indian gaming bills, IGRA contains exceptions to this provision.

Section 2719(b)(1)(B) contains three exceptions to the high political hurdle of a Governor's veto.[9] These three exceptions are: (i) the settlement of a land claim; (ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process;[10] and (iii) the restoration of lands for and Indian tribe that is restored to Federal recognition. Clearly, one compelling reason for providing such exemptions is to provide all tribes with at least one opportunity for the economic advantages of gaming without having to seek the Governor's concurrence. If Congress had limited gaming on lands within known reservation boundaries, then newly acknowledged tribes or tribes that settled land claims would have been denied the opportunities that IGRA provides.

In enacting the restored lands for restored tribes exception, Congress could have enacted an exception for tribes that had been congressionally or legislatively recognized. Moreover, it could have limited the definition of restored lands to former reservation boundaries as it did in § 2719(a)(2)(A)(ii). Congress did neither. Instead it enacted a broad, albeit ambiguous section, that exempts restored lands for restored tribes.

However, because IGRA provides certain temporal (i.e., the October 17, 1988 limitation for reservation boundaries) and geographic limitations (i.e., land within or contiguous to the tribe's reservation) we cannot view § 2719(b)(1)(B)(iii) to allow gaming on after-acquired lands with no limitations. Consequently, we do not use a dictionary definition of restored to include all land "restored." It also seems clear that restored land does not mean any aboriginal land that the restored tribe ever occupied. Tribes that were not terminated and thereby not capable of being "restored," lost vast amount of land and were forced to move all over the country such that their reservations on October 17, 1988, are vastly different than their aboriginal land.

We agree with Judge Hillman's finding in Grand Traverse that § 2719(b)(1)(B)(iii) could be read "in numerous ways to place belatedly restored tribes in a comparable position to earlier recognized tribes while simultaneously limiting after-acquired property in some fashion." Grand Traverse at 700. However, because this opinion is related solely to the Confederated Tribes, we will not opine as to the possible temporal or geographic or other limitations of the restored land subsection.[11]

Further, applying the Indian canons of construction to assist us in determining the scope of § 2719(b)(1)(B)(iii) means not only that we may draw all applicable inferences in favor of the Tribes, but also that we should not apply the canon such that it benefits a certain group of tribes to the disadvantage of other tribes. Confederated Tribes of Chehalis v. State of Washington, 96 F.2d 334 (9th Cir. 1996).[12]

Analysis of Hatch Tract

The Tribes of Coos, Lower Umpqua & Siuslaw Indians (now the "Confederated Tribes") were terminated by the Western Oregon Termination Act of 1954. Congress restored the Confederated Tribes on October 17, 1984, 25 U.S.C. § 714 et seq. (1998).

1. Background of the acquisition of the Hatch Tract

The Department took the Hatch Tract into trust in January 1998.[13] The tract is about 98 acres and is the site of a former Siuslaw village and its adjacent to an important Indian cemetery which contains the remains of tribal ancestors.

After the court's ruling, the Tribes supplemented the record with "The Hatch Tract: A Traditional Siuslaw Village Within the Siletz Reservation, 1855-75." December 4, 2000, Dr. Stephen Dow Beckham ("Beckham Supplemental Report"). In his report, Dr. Beckham writes:

The Hatch tract was first identified as a "Suislaw Village" by Capt. John F. Reynolds of the U.S. Army in July 1856. The site, known as Ka'aich, was the location of the ceremonial lodge of the Earth Lodge Cult, a version of the Ghost Dance, in 1877. A part of the Ka'aich was issued to Jesse Martin, a Coos Indian, as an allotment in 1892, pursuant to the allotment agreement with the Indians of the Siletz Reservation resolved that year. Another portion of the Ka'aich, the site of the tribal cemetery, was allotted to Tom Johnson, a Lower Umpqua India. These are non-taxed Indian properties. The heirs Jesse Martin's granddaughter, Hattie (Martin) Hatch, sold that allotment to the Confederated Tribes in 1995. The heir of Tom Johnson, Elizabeth Anne (Macy) Campbell, a tribal member, retains a portion of that non-taxed allotment, including the tribal cemetery. The Peterman tract, another portion of the Tom Johnson allotment, was deeded to the United States in 1947 to provide a right-of-way into the tribal cemetery. The Bureau of Indian Affairs affirmed the trust status of the Peterman tract in 1997.

Id. at page "i"

Dr. Beckham's report finds that in 1859 the Coos and Lower Umpqua wanted to remain where they were located instead of moving to the newly created Siletz Reservation. Id. at 9-13.

In March 1998, the attorney for the Confederated tribes wrote to the Portland Area Director discussing the history of the acquisition of the Hatch Tract and the tract itself.

According to counsel for the Confederated Tribes, sometime in 1996 the Tribes began to search for a site for a gaming operation with the assistance of its counsel, Mr. Whittlesey, and tribal historian Dr. Beckham. Dr. Beckham and Mr. Whittlesey considered on-reservation gaming in the Empire section of Coos Bay, Oregon. However, the Coquille Tribe operated a close-by casino in North Bend. In March 1998 counsel for the Confederated Tribes wrote of the Hatch Tract:

Independent of the project being handled by Dr. Beckham and me, the Confederated Tribes were given the opportunity to acquire the Hatch Tract approximately two years ago. This tract was a public domain allotment which was deeded to the ancestor of a tribal member and which had never been on the Oregon or Lane County tax rolls. The tract was adjacent to the old Indian cemetery just east of Florence in Lane County, and

more importantly, was known to encompass the site of an old Siuslaw Indian village.

The land was owned by the heirs of Hattie Hatch and had been occupied until only a few years ago by a tribal member who had recently died. The family had a desire to see the site transferred to tribal ownership and the price agreed upon was considered very attractive from the Confederated Tribes' viewpoint. (The land was acquired and accepted into trust for the Confederated Tribes in early March 1998.)

March 23, 1998 Letter to Stan Speaks, Portland Area Director, BIA from Dennis J. Whittlesey.

The Hatch Tract was taken into trust for historical, cultural, and economic self-sufficiency. At the time of the land being taken into trust, the tribes were not considering it for gaming purposes.[14] The Tribes decided to focus on the Hatch tract for its planned gaming operation because they were concerned that two casinos could not be operated at a profit in the Coos Bay area and the Coquille casino was already established. The Confederated Tribes wanted to maximize their economic development opportunities.

2. **Historical significance of the Hatch Tract to the Confederated Tribes**

As part of the previous litigation, the Tribes submitted an affidavit from its historian, Dr. Stephen Dow Beckham. Dr. Beckham is a Professor of History at Lewis & Clark College in Portland, Oregon. In addition, as previously noted, the Tribes supplemented the record with the Beckham Supplemental Report.

According to Dr. Beckham's Affidavit, the Hatch tract is historically significant to the Confederated Tribes. Dr. Beckham testifies in his affidavit:

I have also researched the Hatch Tract at the western side of the confluence of the North Fork with the main Siuslaw River, land lying in Sections 25 and 26. This property was confirmed in July 1856, by Captain John F. Reynolds of the U.S. Army as the site of a large Indian village and was so denominated on his map of a reconnaissance from Umpqua River to Cape Perpetua. In 1892, Jesse Martin, a Coos Indian, secured this property as Fourth Section Allotment under the provisions of the General Allotment Act of 1887. The land passed successively to his son, Ike Martin, and his granddaughter, Hattie (Martin) Hatch. In 1997 the heirs of Hattie Hatch own (ed) the allotment. The land is deemed "non-taxed Indian land" by Lane County and there is no record that his land has ever left Indian tenure or been subject of taxation.

December 17, 1997 Affidavit of Stephen Dow Beckman.

The Beckham Supplemental Report reinforces that the Hatch Tract was the site of an aboriginal village. In addition, the report shows that the Hatch Tract was within the boundaries of the Siletz reservation created on November 5, 1855 by President Franklin Pierce. Also, the Hatch Tract remained within the reservation boundaries when it was reduced by Executive Order in December 20, 1865. Id. (Recall that in 1862 the Coos, Lower, Umpqua, and Siuslaw Indians were removed to the Siletz Reservation. Id. at 9-13.)

Also, the Peterman Tract is contiguous to the Hatch Tract. While the court agreed with the Department's view that the Peterman Tract was not part of the reservation as of October 17, 1988, the history of the Peterman tract sheds light on the history of the Hatch Tract. In the Administrative Record is the Bill of Sale dated June 24, 1944. A.R. 00128. This Bill of Sale for Allotment No. 113 which was owned by Mr. Johnson. This bill of sale reserves 12 acres of the Allotment for use as "Indian burial

and cemetery ground." Id. In 1945 the Superintendent wrote to the Commissioner of Indian Affairs that "we do not see how we can keep faith with the Indians of the area, who from time immemorial have used this land for burial grounds, if we do not see that an instrument is executed at the time of the sale to insure them of the continued use of their cemetery." A.R. 00138. The remaining portions of the Allotment were sold. Id.

Thus, near the time of termination, the BIA recognized the significance of the cemetery site and reserved it and a right-of –way to it. In addition, in 1943, the Grand Ronde-Siletz Agency reported in its fiscal year report that "a second community building should be built for the Indian people centered around the town of Florence. There are about fifteen families in this area. However, suitable land for the construction of such a community building must first be made available." Id. at 00121.

In addition, on October 14, 1998, Congress amended the Restoration Act through a technical correction bill. Pub. L. No. 105-256. This bill added the Peterman tract to section 7, the Establishment of the Reservation. Id. § 5. However, this bill did not add the Hatch Tract.

3. Hatch Tract is restored land

At issue is whether the Hatch Tract meets the exception found in § 2719(b)(1 (B)(iii) for restored lands for restored tribes. There is no question that the Confederated Tribes are a restored tribe. The only question here is whether the Hatch Tract constitutes "restored lands."

We agree with NIGC's interpretation in its GTB Decision that:

Congress likely did not intend to substantially undercut the general prohibition on gaming on lands acquired after IGRA's passage. Although Congress did not limit the definition of restored lands to former reservation boundaries as it did, for example, in section 2719(a)(2)(B), we believe the phrase "restoration of lands" is a difficult hurdle and may not necessarily be extended, for example, to any lands that the tribe conceivably once occupied throughout its history.

Id. at 15.

The Confederated Tribes were restored by Congress to Federal recognition in 1984, well before IGRA was enacted. The Restoration Act established a reservation for the Tribes, see § 713f and § 714e. However, since this was prior to the passage of IGRA, the Tribes and Congress had no reason to believe that this could limit the Tribes' future economic development. The court in the Coos decision found that Department's requirement for specific legislative direction regarding restored lands sought "to graft a procedural and temporal limitation onto section 2719(b)(1)(B)(iii)." Id. Thus, we believe that it is a reasonable interpretation that since the Restoration Act was passed prior to the passage of IGRA, that the land identified in the Restoration Act may not be the only land that meets the restored lands provision.[15]

Congress, in restoring the Tribes, also wanted to make sure that the boundaries of the reservation did not limit who would receive Federal services. The Restoration Act included a provision for services for members of the Confederated Tribes located in several counties. The Act provides that:

Notwithstanding any provision to the contrary in any law establishing such services and benefits, eligibility of the Tribe and its members for such Federal services and benefits shall become effective upon passage of this subchapter without regard to the existence of a reservation for the Tribe or the residence of the members of the Tribe

on a reservation for such members who reside in the following counties or Oregon: Coos, Lane, Lincoln, Douglas, and Curry.

25 U.S.C. § 714a. Thus members living on the Hatch tract, located in Lane County, were eligible for Federal services.

The next question is whether there is a temporal and/or a geographic nexus between the restoration of the Confederated Tribes and the Hatch Tract. We believe that the land has a geographic nexus to the Tribes. We do not believe that the Tribes are seeking to game on far-flung land. Another consideration is that the tract was a public domain allotment which was deeded to the ancestor of a tribal member and which has never been on Oregon or Lane County tax rolls. The local community has known for years that this land is closely tied to the Tribes. There is also a modern nexus under the Restoration Act because the member, Hattie Hatch who occupied the land until her death, was eligible for services since she lived in the "service area" defined by 25 U.S.C. § 714a.

Moreover, Congress believes that land contiguous to the Hatch Tract, the Peterson Tract, should be part of the Tribes' reservation. While it could be argued that since Congress only restored the Peterson Tract, it suggests that Congress did not intend the Hatch Tract to be considered restored lands we have no indication that Congress ever considered and decided against the Hatch Tract as part of its technical amendments. Therefore, even if the technical amendment was intended only as a clear indication of Congressional intent that the Federal government should view the Peterson Tract as restored lands, it does not preclude the conclusion that the Hatch Tract is restored land especially when viewed in light of weight of the other significant evidence.

Also, we find it significant that near the time of termination the Tribes had a presence in the area and the BIA was considering building community buildings. While we cannot say that this land would have been part of the Tribes' land base had it not been terminated, it does appear that it meets the geographic limitations we believe are implicit in a reasonable interpretation of § 2719(b)(1)(B)(iii).

For the temporal nexus, the Tribes were restored in 1984 and the Hatch Tract was taken into trust in 1998. The acquisition of the lands into trust 14 years after the Tribes' restoration is a significant period of time. In considering whether this is a sufficient temporal nexus, however, several factors must be considered.

One consideration is that Congress allowed 14 years to elapse before restoring the Peterson Tract o the Tribe. Thus, in this particular instance, without some relevant attenuation, the mere passage of time should not be determinative. Also, it is not improper for the Department to take account of the practical effect of the passage of the restored lands exception. For instance, it will often be the case that newly restored tribes will, out of practical necessity, take some time to acquire land.[16] The Department recognizes, as Congress surely did, that newly restored tribes do not have readily available funds for land acquisition, that land is not always available, and the process of land acquisition is time consuming. Another consideration is that the Tribes acquired the land as soon as it was available upon the death of the owner. Thus, the Tribes quickly acquired the land as soon as it was available and within a reasonable amount of time after being restored.[17]

Based on all of the foregoing, we believe that it is a reasonable interpretation of 25 U.S.C. § 2719(b)(1)(B)(iii) that the Hatch Tract constitutes restored lands for a restored tribe.

Conclusion

We have considered the fact that the Confederated Tribes were recognized before IGRA was enacted and that it is seeking to game on land which has been historically tied to the Tribes and has a close geographic proximity to the Tribes. Thus, applying the Indian canons of construction and our expertise in IGRA we find that the Hatch Tract is restored land.

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[1] See attached map.

[2] The court rejected Confederated Tribes' alternative argument that the Hatch Tract qualified for the exception for lands contiguous to the boundaries of the reservation on October 17, 1988. The court did not remand this issue to the Department; therefore, we have no need to address it in this opinion.

[3] The Tribes' complaint raised four claims for relief under the APA: (1) the Hatch Tract qualifies for gaming under § 2719(a)(1) (contiguous lands); (2) the Hatch Tract qualifies for gaming under § 2719(b)(1)(B)(iii) (restored lands for restored tribes); (3) the Assistant Secretary's decision deviated from prior agency practice without reasoned explanation; and (4) the Assistant Secretary's decision was arbitrary and capricious because it was made without considering certain pertinent materials relating to the relevant history of the Hatch Tract.

[4] See Memorandum dated August 5, 1999, from Associate Solicitor – Indian Affairs to Director, Indian Gaming Management Staff concerning the Little Traverse Bay Bands of Odawa Indians; Letter dated August 3, 1998, from the Solicitor, U.S. Department of the Interior, to the Congressman Vic Fazio concerning the Mechoopda Tribe of the Chino Rancheria; Memorandum dated March 16, 1998, from Associate Solicitor – Indian affairs to Acting Director, Indian Gaming Management Staff concerning the Little River Bank of Ottawa Indians; Memorandum dated November 12, 1997, from Associate Solicitor – Indian Affairs to Deputy Commission for Indian Affairs concerning the Little Traverse Bay Bands of Odawa Indians; Memorandum dated September 19, 1997, from Solicitor, U.S. Department of the Interior to the Secretary, U.S. Department of the Interior concerning the Okagon Band of Potawatomi Indians; Letter dated March 14, 1995, from Assistant Secretary – Indian Affairs to Delores Pigsley, Chairman of the Confederated Tribe of Siletz Indians concerning "restored land" and Tribal-State Compact approval' Memorandum dated March 6, 1995, from the Regional Solicitor, Pacific Northwest Region, to Director, Indian Gaming Management Staff, concerning the Confederated Tribe of Siletz Indians: Memorandum dated February 1, 1994, from Associate Solicitor – Indian Affairs to Deputy Director for Legislative and Intergovernmental Affairs concerning the "restored land" exception for the Confederated Tribes of the Grand Ronde Community of Indians; Letter dated October 15, 1993, from Assistant Secretary – Indian Affairs to Mark Mercier, Chairman of the Confederated Tribes of the Grand Ronde Community of Indians, concerning "restored land" and the Tribal-State Company disapproval; Memorandum dated September 27, 1993, from the Associated Solicitor – Indian Affairs to Pacific Northwest Region Assistant Regional Director. Confederated Tribes Administrative Record at 00178-00214.

[5] In its analysis in the GTB decision, the NIGC found § 2719(b)(1)(B)(iii) to be ambiguous. Id. at 12.

[6] In Grand Traverse the court found the Department should give the term "restored" its plain, dictionary meaning. Id. at 696. However, the court said that even if the "government's definition could be considered plausible, a conclusion I reject, the Band's

construction should be given preference. Id. at 700. The court then cited Bryant v. Itasca County, 426 U.S. 373 (1976) holding that ambiguities in a statute dealing with Indians should be construed to their benefit.

[7] The Department recognizes, as the NIGC recognized in its GTB Decision, that since we are not proceeding through formal administrative adjudication or formal rulemaking, this opinion is not entitled to the fullest measure of deference. See United States v. Mead Corp. 121 U.S. 2164 (2001). GTB Decision at 7. Nevertheless, we have tried to exercise care, experience and informed judgment, including reviewing materials submitted by the Tribes and the NIGC. Moreover, the Department has used it expertise in the area of Indian lands and Indian gaming in reviewing this question.

[8] The circuits are in conflict regarding the application of the canons of construction. In the 9th Circuit the court has declined to apply the Indian canons of construction in light of the competing deference given to an agency charged with the statute's administration pursuant to Chevron USA, Inc., 47 U.S. at 842-44. Chugach Alaska Corp. v. Lujan, 915 F.2d 454 (9th Cir. 1990), Seldovia Native Ass'n v. Lujan, 904 F.2d 1335, 1342 (9th Cir. 1990) and Haynes v. United States, 891 F.2d 235, 238-39 (1989). However, the 10th Circuit, takes a different view finding that the canon of construction trumps the agency's interpretation of a statute. See, Ramah Navajo Chapter of the Navajo Nation v. Lujan, 112 F.3d 1455 (10th Cir. 1997).

[9] We should not ignore that the Department's regulations for taking land into trust, 25 C.F.R. Part 151, provide for notice to the state and local government. Thus, while the Governor does not have a veto, the local community still has an opportunity for involvement while the land is being considered for trust status.

[10] However, as Judge Hillman points out, there can be situations like Grand Traverse in which a tribe restored through the acknowledgment process can still be considered restored for purposes of § 2719(b)(1)(B)(iii). Grand Traverse at 699.

[11] We believe that the better approach is for the Department to engage in Notice and Comment Rulemaking to determine the factors it will consider in determining whether other parcels of land meets the restored land exception.

[12] We also note that the court in Confederated Tribes and the court in Grand Traverse recognize that the more expansive interpretation of § 2719(b)(1)(B)(iii) would benefit restored tribes vis-à-vis other tribes. Confederated at 164, Grand Traverse at 700.

[13] As noted by the court, the Hatch Tract is formally described as two portions of Government Lots 1 and 2 in Section 25 and portions of the E1/2NE1/4 and Lot 1 in Section 26, township 18 South, Range 12 West, Willamette Meridian, contain 98.165 acres more or less.

[14] In Mr. Whittlesey's letter of March 23, 1998, he says that while he and Dr. Beckham were considering it, they had not provided their report to the tribal council until after the land was taken into trust. Id. at 2-4.

[15] Since we only have before us a tribe who was restored prior to IGRA, we are not opining whether a tribe restored after the enactment of IGRA is limited to the land identified in the legislation restoring the tribe.

[16] In the proposed revisions to the regulations governing the Acquisition of Title to Land into Trust, 25 C.F.R. § 151, the Department considered 25 years as a

reasonable period of time to acquire land in the proposed Tribal Land Acquisition Area. While the Department withdrew these regulations on unrelated grounds, this is an indication of a reasonable time to acquire restored lands.

[17] While not before us, we may apply a narrower temporal connection if a tribe already has a gaming establishment and is seeking to expand.

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testified 4-19-04

My name is Guy Warren. I am the Stated Clerk of the Presbytery of Alaska.

On behalf of the Presbytery, I come before this Committee to express our sincere opposition to the approval of House Bill 552.

The Presbytery of Alaska consists of the 15 member churches of the Presbyterian Church (U.S.A.) from Yakutat in the north, to Metlakatla in the south.

We believe that this bill represents a significant step towards situations which will not be in the best interest of the state government or the citizens which it serves.

While we know that approval of this legislation could provide new funding to meet the state's financial needs and perhaps new employment, we also believe that the costs the state will incur attempting to repair the social ills that gambling brings with it will more than consume that new funding, and remove any real benefit from any new employment. These social ills include increased domestic violence, various psychological and social problems and an increased incidence of suicide. These are all issues that trouble our state enough, and certainly no additional encouragement for these are needed.

We understand that our concerns about these costs are only beliefs and that some might disagree. We however, believe it would be prudent and only right for the legislature to seek detailed and independently researched estimates on these costs before taking the steps which would force the state to pay them. This legislation will see serious casino gambling introduced to our state prior to this research.

The presbytery submitted a resolution approved by us last fall, to the members of the legislature earlier in this session expressing our specific opposition to video gambling. Our reasons for doing so are given in that resolution, additional copies of which will be made available to the members of the committee.

While this resolution concerns itself only with video poker, our opposition certainly extends to more extreme forms of gambling which the bill before your body would propose.

The presbytery met again, just this last weekend, in our regular Spring meeting, and while no specific resolution on these matters was considered at that meeting, a discussion with a member of the State Senate who briefly visited us more than amply demonstrated that our opposition to increased gambling within the state remains.

Finally, we would strongly urge the members of the legislature to remember who they represent, namely the people of Alaska. The people of the state have spoken on the matter of gambling and they spoke loudly. A proposal to set up an Alaska Gambling Board was presented to the people in 1990. This measure was defeated by over 40,000 votes, almost a 2-1 margin. We would hope that the legislature would step carefully before turning their back on such a clear mandate from the people.